

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA (Asheville)

No. 1:20-cv-00066-WGY

CARYN DEVINS STRICKLAND, formerly known as Jane Roe,
Plaintiff

vs.

UNITED STATES OF AMERICA, et al.,
Defendants

* * * * *

For Bench Trial via Courtroom Zoom Before:
Judge William G. Young

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Monday, December 11, 2023

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1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE COURT: The United States District Court is
4 now in session. You may be seated.5 THE CLERK: Now hearing Civil Matter 20-00066,
6 Strickland versus the United States.7 THE COURT: Good morning counsel. Could I ask you
8 to introduce yourselves starting -- yourselves, starting
9 with the plaintiff's counsel.10 MR. STRICKLAND: Good morning, your Honor, Cooper
11 Strickland for the plaintiff.

12 MS. STRICKLAND: And Caryn Strickland. Thank you.

13 THE COURT: Good morning to you both.

14 And for the defense?

15 MR. KOLSKY: Good morning, your Honor, Joshua
16 Kolsky on behalf of the defendants, and with me seated
17 at counsel table are Madeline McMahon, Danielle Young,
18 from the Department of Justice, James Ishida, the
19 Circuit Executive for the Fourth Circuit and one of the
20 defendants in this case, Christian Namhurtz from the
21 Administrative Office of U.S. Courts, the Federal
22 Council's Office, Erol Spears, who will be assisting
23 with our trial presentation technology, and also present
24 in the courtroom are DOJ Attorneys Delotta Wells and
25 Dorothy Canevari as well as William Meyers, the General

1 Counsel of the Administrative Office of U.S Courts, and
2 finally Kimberly Knight and Tracey Urban, who are both
3 paralegals at the Department of Justice.

4 THE COURT: Well good morning to you all. You are
5 welcome.

6 On the Court's end, we are assisted in the Western
7 District of North Carolina with Courtroom Deputy Clerk
8 Hayley Shade, and, um, Ms. Shade will administer the
9 oath to witnesses during the course of the trial.
10 She'll be with us throughout the trial.

11 Here in Boston I'm assisted by Courtroom Deputy
12 Clerk, Jennifer Gaudet. The official transcript of
13 these proceedings is taken down by our Official Court
14 Reporter, Rich Romanow.

15 A few things need be stated at the outset. One,
16 and I'm talking to the gallery here, um, given the fact
17 that I am sitting in Boston after designation as a
18 visiting judge to the Western District of North
19 Carolina, the local rules for the Western District of
20 North Carolina apply and they apply here in Courtroom 18
21 in the John J. Moakley Courthouse here in Boston. And
22 the specific aspect of those rules that is important to
23 the public is that under the local rules of the Western
24 District of North Carolina, there are no -- to be no
25 electronic devices of any sort in the courtroom during

1 these proceedings. And I speak to the Western District,
2 um, you know your local rules and we are following your
3 local rules throughout.

4 The, um -- various motions have been filed, only a
5 few need be ruled on. I do need the help of counsel,
6 there has recently been filed a -- as I have requested,
7 a single exhibit list going up to Exhibit Number 134 in
8 evidence.

9 And do I understand that this encompasses those
10 exhibits to which the plaintiff raised an objection, but
11 I see a document here, um, filing Number 35, where those
12 objections are withdrawn.

13 Is that right, Mr. Strickland?

14 MR. STRICKLAND: Just give me one moment, if you
15 will, your Honor. Yes. Up to 134, um, the objections
16 were withdrawn.

17 THE COURT: All right. So, um -- but it does not
18 include the 7 exhibits that, um -- of the documents
19 proffered by the defense, to which the plaintiff raised
20 no objection. So what we'll do is --

21 Is that right, Mr. Strickland?

22 MR. STRICKLAND: Um, I'm not sure I can comment on
23 their --

24 THE COURT: Well I'll ask the defense.

25 I've got Exhibits 1 through 7 which -- to which no

1 objection was raised?

2 MS. YOUNG: Yes, your Honor, 1 through 7 on our
3 list are the ones which no objection was raised.

4 THE COURT: Okay.

5 MS. YOUNG: The exhibit list was like --

6 THE COURT: All right, look, we're only going to
7 have one list of exhibits in evidence, so your 1 through
8 7 will start at 135, and you renumber them. Um, let's
9 see, um, 7 and 34 takes us up to, um, 141. And so
10 they'll be renumbered. And now I've got 141 exhibits
11 which are part of the record and I am responsible for
12 them.

13 I notice, as I go over this list of exhibits,
14 various depositions are mentioned. Are all the
15 depositions -- does that mean that I am to read the
16 entire deposition or are portions of the depositions
17 spelled out here?

18 MR. STRICKLAND: Your Honor, we mailed courtesy
19 copies of those deposition designations with the
20 exhibits, which is, my understanding, the way the
21 practice works in this district, that they are exhibits.

22 THE COURT: Well that's so -- excuse me. So
23 what's of record are the deposition designations, and I
24 will be sure to have read them all. And if objections
25 are raised in the deposition, I will endorse them so

1 we're clear what we're doing.

2 All right.

3 MS. YOUNG: Your Honor, can I have permission to
4 speak?

5 THE COURT: Yes.

6 MS. YOUNG: Your Honor, the exhibit list that was
7 filed this morning by plaintiff, I just want to be clear
8 it's not a joint exhibit list, and defendants have a
9 number of objections to the exhibit list that plaintiff
10 filed.

11 THE COURT: Well, look, I issued an order here and
12 the order was that you were to get together and exhibits
13 that to which objections were raised, they would get
14 letters, and exhibits to which no objections were
15 raised, they would get numbers. Now that's an order,
16 that wasn't some negotiating position. So you people
17 now are going to have to sit down, after today's
18 session, and work that out. But I've been given
19 something that I thought there was no objection to.

20 And I'll say this further about exhibits. I will
21 assume -- even as to exhibits for identification, I will
22 assume the authenticity of the document, or whatever it
23 may be, unless you particularly, in your objection, call
24 out what you suggest to me that it's not authentic.

25 Now let me deal with some other matters. The

1 motion for sequestration is allowed. And you know the
2 requirements as to sequestered witnesses, so they will
3 not be in the courtroom, nor will they discuss in any
4 way the testimony of any other witness.

5 The motion to close the courtroom for the
6 testimony of the plaintiff is denied. It is imperative
7 that a court proceeding such as this be public and on
8 the record. There are a few rare exceptions to that and
9 you may raise those at the time. But everyone's going
10 to testify in public. This entire proceeding is going
11 to be public.

12 References made on -- I'm looking at these
13 recently-filed documents quickly. But reference was
14 made to things that you have denominated "confidential"
15 in the course of discovery. I'm not honoring any of
16 that during this trial. If something is going to be
17 proffered to the Court as a basis for making findings
18 and rulings, it's going to be public, unless it fits any
19 one of those narrow exceptions.

20 I think with that done, we're ready to go. We
21 agreed on 15 minutes a side for opening. So,
22 Mr. Strickland, I take it, though, as -- Ms. Strickland,
23 you're an attorney, and you may divide this up as you
24 see fit, except when you testify, Mr. Strickland will be
25 asking questions and you will be answering. So if I

1 call on one of you and the other one is going to
2 present, simply correct me. I'm fine with that.

3 All right. 15 minutes for openings.

4 MR. KOLSKY: Sorry, your Honor, may I first
5 interrupt with one clarifying question about one of your
6 rulings?

7 THE COURT: You may.

8 MR. KOLSKY: With regard to the motion for
9 sequestration, um, as I mentioned, Mr. Ishida is present
10 in the courtroom --

11 THE COURT: He's a party. He's a party and he may
12 be present in the courtroom throughout.

13 MR. KOLSKY: Thank you, your Honor. We are
14 planning to call him as a witness.

15 THE COURT: I understand.

16 MS. YOUNG: And may I ask the Court a clarifying
17 question, your Honor, on one of your --

18 THE COURT: You may.

19 MS. YOUNG: Just for the record, defendants
20 understand that the Court does not want to hear argument
21 on defendants' objection to plaintiff's exhibits, but to
22 preserve this issue on the record, defendants
23 respectfully incorporate all their objections to
24 plaintiff's exhibits by reference as recorded in ECF
25 document number 354. Thank you, your Honor.

1 THE COURT: To tell you the truth, I don't
2 understand what that means, because now is the trial
3 and, um, if someone offers a document, if it's got a
4 number on it, unless you people sort this out this
5 afternoon, I'm going to assume it's admitted. If it has
6 a letter on it, I'm going to assume there is an
7 objection to it. And if I ask for you to argue, I will
8 entertain the argument. If I can figure it out by
9 looking at the document, I will, and I'll make my
10 ruling. So that's why it's important that I have a
11 single exhibit list of what's in evidence.

12 All right, let's do the openings.

13 MS. YOUNG: I understand, your Honor, but the
14 issue is that plaintiff believes defendants have waived
15 their objections to her to submit because she believes
16 they're untimely, and this issue has been raised since
17 at least September, your Honor, defendants don't believe
18 they've waived their objections, and certainly our
19 objections are more relevant now if they're not waived.
20 And so I think that's where the confusion is coming
21 from.

22 THE COURT: I don't think there's any confusion.
23 Fine, you state that there are objections, we're going
24 to handle them the way I have stated. There's going to
25 be -- there's been no waiver on the part of any party.

1 Now is the trial. I'll hear an opening if you
2 wish to make an opening. No more than 15 minutes.

3 MR. STRICKLAND: Your Honor, if I can get a point
4 of clarification on that as well? We have briefed this
5 issue for -- she's correct, since September. Pursuant
6 to Rule 26, the defendants did not file their objections
7 --

8 THE COURT: Mr. Strickland. Look, Mr. Strickland,
9 I've made my ruling. I'm content with my ruling. I'm
10 aware of what's been filed, and I'm ruling there is no
11 waiver, and I will take it step by step in the trial.
12 Now that's the ruling of the Court.

13 Now do you wish to make an opening?

14 MR. STRICKLAND: Yes, your Honor.

15 THE COURT: I will hear you.

16 (Pause.)

17 MS. STRICKLAND: Okay, your Honor, I apologize,
18 just one more clarification question about your ruling.

19 In terms of the courtroom being sealed for certain
20 testimony regarding sealed exhibits, we understand that
21 ruling, and we don't necessarily have to address this
22 now, we can address this at the time of the testimony,
23 but we would appreciate guidance and clarification about
24 the procedure for referring to exhibits that have been
25 sealed, that there is a right of interlocutory appeal

1 over the sealing.

2 THE COURT: Let's be very clear. Let's be very
3 clear. I have sealed nothing that is going to be used
4 as a trial exhibit. The burden is on the party to seek
5 to have an exhibit treated other than as a public
6 document. Now let's hear the opening.

7 MR. STRICKLAND: Yes, um, but just to clarify
8 that, um, the deposition testimony of the plaintiff,
9 both depositions, is currently sealed, um, in its
10 entirety.

11 THE COURT: And you're proffering it and it's an
12 agreed-upon exhibit?

13 MR. STRICKLAND: Um, the defendants did not
14 designate the depositions, they have made repeated
15 statements that they are going to use the depositions --

16 THE COURT: Look, Mr. Strickland, try my question.
17 Is the plaintiff's deposition an agreed-upon exhibit,
18 and if so, what is its number?

19 MR. STRICKLAND: It's not, the defendants have not
20 designated --

21 THE COURT: Well you can raise it at the time.
22 If you think you can somehow get her deposition in, you
23 can raise that at the time. I don't really see how her
24 deposition gets in if you're proffering it.

25 I really would like to get to the, um, openings if

1 you wish to make an opening. Go ahead.

2 MR. STRICKLAND: I want to make one last comment
3 on that. We anticipate that the substance of the
4 depositions will be, um, a pretty big chunk of what the
5 questions are about. But anyway, we can deal with that
6 whenever we get to it.

7

8 OPENING STATEMENT BY MR. STRICKLAND:

9 Again, my name is Cooper Strickland and I
10 represent the plaintiff -- um, the plaintiff, Caryn
11 Devins Strickland, a former Assistant Federal Public
12 Defender, alleges that officials of the Federal
13 judiciary subjected her to workplace sex discrimination
14 including deliberate indifference to sexual harassment
15 in violation of her equal protection rights, and
16 subjected her to a fundamentally unfair employment
17 dispute resolution process for resolving her complaint
18 of sexual harassment, sex discrimination, and
19 retaliation, in violation of her due process rights.

20 As this Court previously stated in June 2023, "For
21 the first time in my administration of this case we've
22 moved beyond allegations to actual evidence. There
23 isn't too much dispute as to what went on here. The
24 issues, the major issues are legal issues." The Court
25 reaffirmed this position in July 2023 stating that, "As

1 I said at an earlier hearing, it doesn't seem genuinely
2 that too much of this is disputed." And in its summary
3 judgment order, this Court recognized that the
4 underlying facts favoring plaintiff's equal protection
5 claim against the Defender appear to be undisputed,
6 including through a letter of reprimand issued by the
7 Fourth Circuit's Chief Judge. These statements are as
8 true now as they were then.

9 Plaintiff's equal protection and due process
10 claims are supported by defendants' judicial admissions.
11 In response to her complaint, the administrative record
12 from plaintiff's EDR proceeding, which resulted in
13 disciplinary action against both the Federal Public
14 Defender and the First Assistant for wrongful conduct,
15 defined under the EDR plan as "Discrimination against
16 employees based on sex, including sexual harassment and
17 retaliation for engaging in any protected activity," and
18 the documentary evidence and deposition testimony
19 provided by defendants during discovery.

20 In fact, while plaintiff has provided over 450
21 pages of proposed findings and conclusions that
22 overwhelmingly demonstrate the merits of her claims, it
23 is unnecessary for the Court to review those findings to
24 grant judgment in her favor on her equal protection and
25 due process claims, that is because plaintiff's claims

1 are proven based on a small number of documents produced
2 by defendants that have no objection from either party,
3 which this Court itself highlighted during the further
4 pretrial conference.

5 First, following an investigation in plaintiff's
6 report of wrongful conduct, the Fourth Circuit's Chief
7 Judge issued a letter of reprimand to the Federal
8 Defender based on plaintiff's complaint of workplace sex
9 discrimination and retaliation. This letter followed a
10 memorandum from the Circuit Executive to the Chief Judge
11 explaining "The investigation report recommends
12 disciplinary action be taken against the accused
13 employee, First Assistant JP Davis, as well as the Unit
14 Executive, Anthony Martinez." This Court previously
15 identified the letter of reprimand as an unimpeached
16 public record pursuant to Federal Rule of Evidence 803.

17 The letter of reprimand explained that the FDO's
18 First Assistant, JP Davis, had subjected plaintiff to
19 unwanted advances, unreasonably interfered with her work
20 assignments, and even proposed an unsavory quid pro quo
21 proposal on her request for promotion. The letter of
22 reprimand also reads as a road map of the Defender's
23 deliberate indifference to sexual harassment, as
24 articulated by the Fourth Circuit, by making the
25 following factual findings.

1 Quote, "After attempting to resolve several
2 disagreements between Ms. Strickland and Mr. Davis,
3 Mr. Martinez used an ill-advised metaphor comparing the
4 relationship between Ms. Strickland and Mr. Davis as a
5 'marriage' with the parties needing to compromise and
6 meet in the middle." This letter also states that
7 Ms. Strickland denied that Mr. Davis had touched her
8 inappropriately, but Mr. Martinez said, "At least you
9 weren't touched," or words to that effect. The
10 investigator concluded that his remarks were callous,
11 minimizing, insensitive, and contributed to the distress
12 that Ms. Strickland felt.

13 The investigator found that Mr. Martinez had
14 called out Ms. Strickland for seeking legal advice from
15 the Fair Employment Opportunity Office of the
16 Administrative Office of the U.S. Courts, which further
17 eroded trust between Mr. Martinez and Ms. Strickland and
18 exacerbated the deteriorating situation in his office.
19 Finally, the investigator noted that Mr. Martinez had
20 said he was being blamed for matters he had nothing to
21 do with. "This," the investigator concluded,
22 "contributed to your mishandling of the matter."

23 Further, the lawyer specifically stated the
24 disciplinary action was being taken against the Defender
25 for wrongful conduct under the EDR plan. Chief Judge

1 Gregory's decision stated as follows: "Under Chapter 9
2 of the plan, employees found by the Chief Judge and/or
3 Unit Executive judge to have engaged in wrongful
4 conduct, as defined in this plan, may be subject to
5 disciplinary action."

6 After careful consideration of the investigator's
7 report, supporting attachments and documents filed in
8 this case, and the mitigating circumstances, Chief Judge
9 Gregory has decided to adopt the recommendations
10 contained in the report. These statements conclusively
11 establish that the letter of reprimand, as an
12 unimpeached public record, made findings of unlawful
13 workplace sex discrimination in violation of plaintiff's
14 rights under the EDR plan. Defendants own findings of
15 wrongful conduct during the EDR proceeding amply support
16 a finding that plaintiff was subjected to quid pro quo
17 sexual harassment as well as related sex discrimination
18 and retaliation leading to her constructive discharge in
19 violation of her equal protection rights.

20 Second, defendants violated plaintiff's due
21 process rights because they refused to disqualify the
22 accused Defender from representing the employing office
23 even though he was a party accused of wrongful conduct.
24 Indeed the investigation subsequently found that the
25 Defender had engaged in conduct warranting disciplinary

1 action and was so biased against the plaintiff that he
2 would do further damage to the process if allowed to
3 participate. Nonetheless, the Defender was permitted to
4 discipline the First Assistant following the Defender's
5 own reprimand by the Chief Judge of the Fourth Circuit.
6 Consistent with common sense notions of fundamental
7 fairness, the EDR plan provides for disqualification of
8 an employee, including a Unit Executive, who is involved
9 in a complaint.

10 In plaintiff's review of the EDR plan, she moved
11 for the Defender's disqualification because he was
12 involved in her complaint as an accused party. Under
13 the EDR plan, and as identified by the Fourth Circuit,
14 the plaintiff had a right to a clear and specific set of
15 procedures that are to be followed in the event that an
16 employee claims that his or her substantive rights
17 afforded under the EDR plan had been violated.
18 Defendants violated these procedures including the right
19 to disqualification of an employee involved in a
20 complaint and thereby denied plaintiff her due process
21 right to a fundamentally fair process for resolving her
22 workplace discrimination complaint.

23 Indeed for more than four months after the
24 investigation began, the investigator -- I'm sorry,
25 indeed more than four months after the investigation

1 began, the investigator concluded, in her report, that
2 both the Defender and the First Assistant had engaged in
3 conduct warranting disciplinary action. Based on her
4 recommendation that the Defender be disciplined, the EDR
5 coordinator asked the investigator whether the Defender
6 should be disqualified? Her answer was an emphatic
7 "Yes." Specifically she stated that "I truly believe
8 Mr. Martinez is biased in this case. I also believe he
9 lacks experience and understanding of exactly how this
10 process works. I'm concerned he could cause more damage
11 if he were involved in the process at this point."

12 Even though the investigator concluded that the
13 Defender was biased against plaintiff and can cause more
14 damage if he were involved in the process at this point,
15 the Chief Judge denied plaintiff's request for
16 disqualification without explanation. As a result, the
17 EDR process was both discriminatory and fundamentally
18 unfair. This Court need not look any further because
19 the above documents are sufficient proof of plaintiff's
20 equal protection and process claims.

21 In closing, plaintiff renews her prior motion to
22 admit exhibits and deposition designations. She also
23 renews both of her motion for summary judgment and her
24 motion for preliminary injunctive relief. She requests
25 that the Court recognize a standing objection regarding

1 the subject matter of her previously-filed motions in
2 limine which have not been subject to rulings.
3 Plaintiff also renews her objection to defendants'
4 untimely exhibit and deposition objections and their
5 deposition counterdesignations. Plaintiff requests that
6 any transcripts of this proceeding produced by
7 defendants' private Court Reporter be made available and
8 if and when completed. And lastly she reserves the
9 balance of her time for cross-examination of the
10 opposing statement.

11 THE COURT: Well you've asked for a lot of things
12 in your opening, but you've got a few minutes left.
13 Suppose you are right and the Court finds liability, how
14 are you going to prove damages here?

15 (Pause.)

16 MS. STRICKLAND: Yes, your Honor, I --

17 THE COURT: Wait. Wait. Wait. Wait. I'm used
18 to one person making the opening. So we'll --

19 Mr. Strickland, how are you going to prove
20 damages?

21 MR. STRICKLAND: I think the plaintiff has also
22 entered an appearance here and would be best able to
23 speak to that.

24 THE COURT: Well -- in other words, you're not
25 going to -- you don't have to address it in the opening,

1 that's fine, we'll get to it downstream. But it is a
2 question that I have.

3 MR. STRICKLAND: We have the deposition testimony
4 and report of an expert on lost earnings --

5 THE COURT: Well do you --

6 MR. STRICKLAND: But --

7 THE COURT: Here's why I ask. Is that deposition
8 an agreed-upon exhibit? What's its number?

9 (Pause.)

10 MR. STRICKLAND: I believe it is 109 on our
11 exhibit list.

12 THE COURT: Thank you. All right. That's the
13 answer.

14 Well let's turn to the --

15 (Interruption.)

16 THE COURT: Let's turn then to the judiciary and
17 see if they wish to make an opening. You were about to
18 say something about 109. But I'll hear your opening
19 now. No more than 15 minutes.

20 MS. McMAHON: Good morning, your Honor, Madeline
21 McMahon for the government.

22 THE COURT: Thank you.

23
24 OPENING STATEMENT BY MS. McMAHON:

25 On May 18th, 2018, Caryn Strickland had a

1 mentoring lunch with JP Davis who was the First
2 Assistant at the Federal Defender's Office where
3 Ms. Strickland worked. At that lunch Ms. Strickland
4 told Mr. Davis that she was unhappy living in Charlotte
5 away from her husband who lived outside of Asheville.
6 She told Mr. Davis that she planned to demand a transfer
7 to the Asheville office or else she would have to quit.
8 And she said that if she did not get a transfer, she
9 would need to make more money.

10 Shortly after the lunch, Mr. Davis sent
11 Ms. Strickland an e-mail with the joking subject line
12 "Mas Dinero." He told her that he had a plan to help
13 her ask for a raise so that she wouldn't have to quit
14 the FDO.

15 This is plainly not a sexual advance.
16 Ms. Strickland only began to call this a "sexual
17 advance" three months later when she simultaneously
18 demanded that the Federal Defender, Tony Martinez,
19 transfer her to the FDO's actual office. But as the
20 evidence in this case show, Ms. Strickland has only
21 experienced sexual harassment in her mind.

22 Throughout this trial you will hear about many
23 instances when Ms. Strickland has, in her mind, turned
24 perfectly innocuous events into nefarious ones. Indeed,
25 Ms. Strickland and her counsel would have you believe

1 that almost everyone involved in her EDR claims, from
2 her colleagues at the FDO to the then Chief Judge of the
3 Fourth Circuit, have participated in a conspiracy
4 against her. But as you will learn through the evidence
5 in this case, the reality is far more mundane. Behind
6 plaintiff and her counsel's inflammatory language are
7 facts that simply reveal an ordinary workplace conflict,
8 false accusations, and officials who tried their best to
9 resolve Ms. Strickland's issues.

10 The main events in this case take place from June
11 2018 to March 2019, but there are three key stages to
12 understand about this timeline, the conflict, the
13 accusations, and the response.

14 First, the conflict. The evidence will show that
15 before June, Mr. Davis and Ms. Strickland had a friendly
16 cordial relationship, the two got drinks on several
17 occasions, including at Ms. Strickland's request.
18 Ms. Strickland even sent Mr. Davis texts joking about
19 drinking a bottle of gin. Mr. Davis will also testify
20 that he gave Ms. Strickland rides home on several
21 occasions, often at her request, since they only lived a
22 mile away.

23 Mr. Davis will explain that things began to change
24 in June 2018. Ms. Strickland had recently told
25 Mr. Davis that she wanted to serve as second chair on

1 the Dixon case, a complicated child pornography case
2 that could be headed to trial and that involved a
3 potential life sentence. Mr. Davis will testify that
4 Ms. Strickland made it clear that she wanted to work on
5 this case to make herself indispensable to the FDO so
6 that she could secure a transfer to the Asheville
7 office. Then, in early June, Mr. Davis became
8 frustrated that Ms. Strickland began to prioritize Dixon
9 at the expense of all of her clients. On June 6th,
10 after she cancelled on another client obligation to work
11 on the Dixon case, Mr. Davis ordered her to attend her
12 prior commitment. Mr. Davis will testify that
13 Ms. Strickland became angry and the two had a tense
14 exchange.

15 Now you will hear about some text messages that
16 Mr. Davis sent to his friend, Aaron Taylor, in which he
17 vents about his frustrations with Ms. Strickland. But
18 during this trial it's important to keep in mind that
19 these texts, while sometimes rash, were sent privately
20 to a close friend. Mr. Davis will testify that they
21 were never intended to be shared with anyone.

22 Mr. Davis will also testify that by mid June he
23 believed that the tension between him and Ms. Strickland
24 had mostly faded, but it seemed that Ms. Strickland
25 could not let go of her belief that Mr. Davis had been

1 too critical of her about the **Dixon** issue. In early
2 July, Ms. Strickland twice met with Mr. Davis and
3 Mr. Martinez, first separately and then together, to
4 voice her complaints with how Mr. Davis handled the
5 **Dixon** issue. Mr. Martinez will testify that he believed
6 the conflict between the two boiled down to a workplace
7 communication problem, but he was optimistic that the
8 two could work it out.

9 Mr. Martinez will explain that after their meeting
10 on July 5th, he thought that the conflict had been
11 mostly resolved. Even still, in July, Mr. Martinez took
12 additional steps to make sure that Ms. Strickland felt
13 comfortable, he assigned her a new mentor, ensured that
14 Mr. Strickland and Mr. Davis would no longer be working
15 together, and even told Mr. Davis not to contact
16 Ms. Strickland. So that was the conflict. Next came
17 the accusations.

18 The evidence will establish that throughout July
19 Ms. Strickland remained angry at Mr. Davis and she still
20 wanted that transfer to Asheville. Mr. Martinez will
21 testify that on August 10th, 2018, Ms. Strickland sent
22 him an e-mail accusing Mr. Davis of sexual harassment
23 for the first time and making a list of demands.
24 Prominent among those demands was a transfer to the
25 Asheville office.

1 But the evidence will show that Mr. Davis never
2 made any sexual advances towards Ms. Strickland.
3 Mr. Davis will explain that when he sent the "Mas
4 Dinero" e-mail on May 18th, he was merely echoing
5 Ms. Strickland's comments from just hours earlier that
6 she would quit unless she received a pay increase.
7 Mr. Davis will also testify that when he offered to get
8 drinks with her and to give her a ride home in June, he
9 was acting the exact same way towards Ms. Strickland as
10 she had towards him in the past. The evidence will show
11 that Ms. Strickland never told Mr. Davis that she no
12 longer wanted to get drinks with him or that she no
13 longer wanted him to give her rides home. Only after
14 the workplace conflicts between them arose did
15 Ms. Strickland claim that there was anything untoward
16 about these offers.

17 In mid August the last stage of this timeline
18 began, the response. The evidence will show that
19 Mr. Martinez acted quickly and diligently as soon as
20 Ms. Strickland reported her claim of sexual harassment.
21 Because Mr. Martinez had already told Mr. Davis to stop
22 communicating with Ms. Strickland, the two had no
23 further contact after July. Mr. Martinez took her out
24 of Mr. Davis's line of supervision. And pursuant to
25 Chapter 9 of the Fourth Circuit's EDR plan, Mr. Martinez

1 promptly reported the alleged conduct to the EDR
2 Coordinator, James Ishida. Mr. Ishida will testify that
3 he alerted Chief Judge Roger Gregory and selected an HR
4 Specialist, Heather Beam, to investigate the
5 allegations.

6 Mr. Martinez will also testify that he tried to
7 agree to as many of Ms. Strickland's demands as he
8 could. He agreed to let her telework and Ms. Strickland
9 promptly left Charlotte and began teleworking and living
10 near Asheville. He converted her from a research and
11 writing attorney to an Assistant Federal Defender as she
12 had requested. The one demand that Mr. Martinez
13 couldn't agree to was her request to be transferred to
14 the Asheville office because there was simply no open
15 office space for her to work in.

16 THE COURT: About 5 more minutes, Ms. McMahon.
17 And don't think that I have formed any opinion, but I
18 want to ask you the same question that I asked
19 plaintiff's counsel.

20 How do you counter -- if you lose on liability,
21 how do you counter the claim for damages?

22 MS. McMAHON: May I, um, may I just add that to
23 the end of the statement, your Honor?

24 THE COURT: You may in 5 minutes. Go ahead.

25 MS. McMAHON: Yes.

1 So what did Ms. Strickland do next after
2 Mr. Martinez couldn't agree to her demand to transfer to
3 Asheville? She accused Mr. Martinez of retaliating
4 against her.

5 On September 10th, she filed a formal request for
6 counseling under Chapter 10 of the EDR plan naming
7 Mr. Martinez for the first time along with Mr. Davis.
8 But the evidence will show that Mr. Martinez acted
9 appropriately in response to Ms. Strickland's
10 allegations. While Ms. Strickland accuses Mr. Martinez
11 of backdating her conversion to an AFD to deprive her of
12 a promotion, the evidence simply does not bear this out.
13 Mr. Martinez will testify that the FDO had been planning
14 to convert both Ms. Strickland and a male research and
15 writing attorney in the office for weeks. And the FDO's
16 HR rep, Bill Moormann, will testify that he submitted
17 the paperwork to initiate that conversion on August 16th
18 before Ms. Strickland was eligible for a promotion to GS
19 15. While Ms. Strickland believes she was unfairly
20 passed over for a vacant AFD position, the Appellate
21 Chief, Josh Carpenter, will testify that Ms. Strickland
22 was not interviewed for the open position because it was
23 identical to the one she already had.

24 The evidence will also show that in November,
25 before the investigation into her claims had even

1 concluded, Ms. Strickland had already determined she was
2 done with the FDO. The evidence will establish that
3 Ms. Strickland e-mailed multiple people, including
4 Mr. Ishida and two officials at the Administrative
5 Office, to tell them that she wanted to leave the FDO
6 and to ask them for help to find another job.

7 Meanwhile in January, Ms. Strickland began the
8 mediation phase of Chapter 10. Mr. Martinez will
9 testify that he entered the mediation in good faith
10 wanting to find a way to allow Ms. Strickland to
11 continue to work at the FDO. But the evidence will show
12 that Ms. Strickland was determined to secure a Fourth
13 Circuit clerkship and in her own words, "Transition up,
14 not down." Mr. Ishida will testify that he and the
15 mediator, Ed Smith, helped Ms. Strickland get a
16 clerkship with Fourth Circuit Judge Henry Floyd.

17 The evidence will show that Ms. Strickland
18 voluntarily left the FDO. Indeed at the time she said
19 that she very much appreciated the Fourth Circuit's
20 assistance in helping her reach the best possible
21 outcome, she then voluntarily withdrew her EDR claims
22 and chose not to file a formal EDR complaint.

23 Ms. Strickland now contends that she believes that
24 if she did file a formal EDR complaint, the final
25 decision-maker on her claims would not be a judicial

1 officer, as the EDR plan expressly states, but rather it
2 would be Mr. Martinez. The evidence will show that just
3 the opposite is true, that in fact Ms. Strickland knew
4 that if she filed a formal EDR complaint, a judicial
5 officer would oversee the hearing and determine any
6 remedies. The evidence will also show that there is no
7 merit to Ms. Strickland's convoluted theory that
8 Mr. Smith jokingly, the Judicial Integrity Officer at
9 the AO, led her to believe that Mr. Martinez would
10 decide her EDR claims.

11 THE COURT: Your time's about up, Ms. McMahon.

12 (Pause.)

13 THE COURT: All right.

14 MS. McMAHON: Excuse me, your Honor?

15 THE COURT: Your time's about up. Sum up.

16 MS. McMAHON: So to sum up, um -- and I'll address
17 damages briefly, you will also hear from two of
18 defendants' experts --

19 THE COURT: No, your time's about up. You have a
20 couple of experts, that's fine. Let's get to evidence
21 now. You've had your 15 minutes.

22 All right, call your first witness.

23 MR. STRICKLAND: Your Honor, um, we have -- to
24 state it simply, we said this in the most recent
25 hearing, it was a document's case and we, um, the

1 plaintiff intends to rely on that, and their extensive
2 record now, and we will rely on those as well.

3 THE COURT: I just want to be clear what you're
4 doing. Are you resting?

5 MR. STRICKLAND: Um, again, we have fact witnesses
6 who testified by deposition and we have expert witnesses
7 that testified by deposition.

8 THE COURT: Well be very clear, I'm not going to
9 accept the -- whether they object to it or not, I'm not
10 going to accept expert testimony by deposition, you call
11 a live expert. He need not be called today. But to be
12 clear, any expert for the plaintiff or the defense is
13 going to testify live. The fact that they have been
14 deposed is -- I just don't see the basis for admitting
15 expert testimony by deposition. So have that in mind.

16 So let me put it to you. Do you rest?

17 MR. STRICKLAND: Your Honor, we have filed
18 numerous motions on these issues and we move for the
19 deposition testimony to be admitted. We provided
20 numerous bases for that including under the Rules of
21 Civil Procedure, which the Court had previously told us
22 it would follow on these issues.

23 THE COURT: Well I have to follow the Rules of
24 Civil Procedure, I have no choice about it, they are the
25 force of law. But if you're confident -- if you're

1 confident that I have to receive the depositions and
2 you're otherwise satisfied with the exhibits that are
3 before the Court, then, um, I understand that your
4 answer to my question is "Yes, you rest," is that
5 correct?

6 MR. STRICKLAND: Again we rely on the exhibit list
7 that we filed this morning, um, and our proposed
8 findings of fact and conclusions of law which fully set
9 forth the documentary record in this case and the legal
10 conclusions that this Court could draw. I would also
11 add though that this is a pretty standard principle in
12 the First Circuit, it's my understanding, that you don't
13 need an expert for --

14 THE COURT: I didn't say you did. Be very clear
15 though that the law that I must follow here is the
16 Fourth Circuit, I'm a visiting judge in the Fourth
17 Circuit and I must follow the Fourth Circuit's law. So
18 I'm taking it that you're resting. The defense has said
19 something about objecting to some of these exhibits and
20 if I were to sustain any of those objections, I'll give
21 you a chance to call witnesses live. But otherwise
22 you'll rest on your 134 exhibits.

23 Is that right?

24 MR. STRICKLAND: May I have one moment, your
25 Honor?

1 THE COURT: Of course.

2 (Pause.)

3 MR. KOLSKY: Your Honor, this is Josh Kolsky for
4 the defendants. I just want to be clear on the record
5 that we do object to the wholesale admission of
6 plaintiff's exhibits without foundational testimony from
7 a witness, and we have made objections to several of
8 plaintiff's exhibits and --

9 THE COURT: You have, but both of you --

10 MS. STRICKLAND: The is no foundation for --

11 THE COURT: Wait a minute. Wait a minute. Only
12 one person is going to talk at a time. And when I
13 speak, please allow me to speak, so I can preside.

14 Let me say to the defense, I am not satisfied with
15 how the exhibits have come before me. Exhibits which
16 have a number, I was very clear, those exhibits are
17 admitted in evidence.

18 Now I am hearing for the first time that there's
19 some objection to these exhibits. I'll let you folks
20 work this out this afternoon. And as I said to
21 Mr. Strickland, if I were to strike any of these
22 numbers, then I will allow him to lay a foundation for a
23 live witness.

24 So I understand that you do object. Well we can
25 discuss the matter this afternoon.

1 Now, Mr. Strickland, I'm hearing that your 134
2 exhibits, if they remain in evidence, is your case. Is
3 that right?

4 MR. STRICKLAND: Again, if I may have one moment
5 to confer?

6 THE COURT: Of course you may.

7 MR. STRICKLAND: Sir, just to comment on the, um
8 --

9 THE COURT: No. No. No. Wait. Wait. You have
10 to, Mr. Strickland, you have to allow me to preside. I
11 threw a question to you. You may answer the question.
12 But I don't want comments. Are you going to rest or
13 not? If you tell me no, I will allow you to put on
14 evidence, any competent evidence.

15 Now, is it "yes" or "no," are you resting on these
16 134 exhibits?

17 (Pause.)

18 MR. STRICKLAND: Yes, your Honor, subject to the
19 objections we filed and stated on the record.

20 THE COURT: That's fine, I'll take it that way.

21 And I'll turn then to the government. You may
22 call your first witness.

23 MR. KOLSKY: Your Honor, defendants move for
24 judgment on the merits pursuant to Rule 52(c), and I'd
25 like to make a brief argument about that, if I may?

1 THE COURT: Not now, but I'll take it under
2 advisement though.

3 All right, call your first witness.

4 MR. KOLSKY: Thank you, your Honor.

5 Defendants call Caryn Strickland.

6 THE COURT: She may be called.

7 And the Clerk, Ms. Shay will administer the oath.

8 (CAROLYN STRICKLAND, sworn.)

9
10 *****

11 CARYN STRICKLAND

12 *****
13

14 DIRECT EXAMINATION BY MR. KOLSKY:

15 Q. Ms. Strickland, you started working at the Federal
16 Defender's Office for the Western District of North
17 Carolina in August 2017, correct?

18 MR. STRICKLAND: Objection, your Honor.

19 THE COURT: Overruled.

20 MS. STRICKLAND: I'm going to object on the
21 grounds of --

22 THE COURT: Wait. Wait. Wait. Ms. Strickland,
23 you are an attorney, but you were represented by counsel
24 here. Counsel makes the objections. He made one. I
25 overruled it. That's a appropriate question. You will

1 answer the question.

2 Is that when you started work there?

3 MR. STRICKLAND: Your Honor, if I may be heard on
4 that for just a moment?

5 THE COURT: No, you may not.

6 THE COURT: When did you start work there, ma'am?

7 THE WITNESS: Yes, your Honor. I am going to --
8 in addition to the objection raised by counsel, I am
9 going to -- based on the advice that I have received
10 from counsel, I am going to assert my Fifth Amendment
11 constitutionally-protected right to silence.

12 THE COURT: On the question "When you started to
13 work there?"

14 THE WITNESS: Yes, your Honor.

15 THE COURT: If you do that -- if you do that, how
16 can I accept anything that you said that is before me.
17 You cannot use the Fifth Amendment as both a shield and
18 a sword. So if that data appears -- and I believe it
19 does appear, if that data appears of record -- in the
20 record of this case as it now stands, I see no reason to
21 -- you've waived it because it's a matter that's clear.
22 All right?

23 Mr. Kolsky, if you so represent that that's a
24 matter of dispute before that she was --

25 (Interference.)

1 MR. STRICKLAND: I'm sorry, your Honor, would you
2 repeat that. I didn't hear that question.

3 THE COURT: Do you represent, as an officer of the
4 court, that you've spoken about that issue before and it
5 is a matter of record in this case as it now stands?

6 MR. KOLSKY: I don't know if she was specifically
7 asked that question at her deposition. I don't think
8 there's any real dispute about that fact. I don't know
9 if there's a document in evidence currently that speaks
10 to it, which is what I wanted to establish it through
11 Ms. Strickland. I also don't think that there's any
12 basis for her to invoke the Fifth Amendment on this
13 issue, there's no reasonable fear of prosecution.

14 THE COURT: Yes, I can't see any. Overruled.

15 You will answer the question, Ms. Strickland. Is
16 that when you started working?

17 MR. STRICKLAND: Your Honor, we would request to
18 be able to submit in camera documents to support the
19 Fifth Amendment assertion.

20 THE COURT: Well by "in camera" do you mean just
21 to me that the government doesn't see?

22 MR. STRICKLAND: Yes.

23 THE COURT: I won't allow that. They get to see
24 it. I might take it in camera and review it, but, um --

25 MR. STRICKLAND: It involves an attorney-client

1 privilege that cannot be waived with respect to this
2 issue.

3 THE COURT: I just don't see any privilege here.
4 She was just asked when she started to work there.
5 She'll answer the question.

6 MR. STRICKLAND: The argument --

7 THE COURT: Ms. Strickland, answer that question.
8 When did you start work there?

9 THE WITNESS: Your Honor, may we take a quick
10 recess because this --

11 THE COURT: We may not. We may not. Answer that
12 question.

13 MR. STRICKLAND: What's going to happen though is
14 we're going to be accused of waiver if she answers any
15 of those questions.

16 THE COURT: Well I think she's -- no, I don't see
17 it's waiver, my ruling rests that I cannot see how that
18 exposes her to any possibility of criminal prosecution
19 -- reasonable possibility of criminal prosecution either
20 in the state courts or the federal court. Now if I had
21 some basis for thinking that there was, even remote, a
22 basis for possible criminal prosecution, I would rethink
23 it. I am a very strong defender of the Fifth Amendment.
24 But I don't see it. I just don't see it. So she'll
25 answer the question.

1 When did you start working there in that
2 Defender's office, ma'am?

3 (Pause.)

4 THE WITNESS: August 2017.

5 Q. You graduated law school in 2013, correct?

6 A. Yes.

7 Q. Before working at the Federal Defender's office,
8 you have done three judicial clerkships and you had been
9 a fellow at the Supreme Court, correct?

10 A. Yes.

11 Q. Before starting at the Federal Defender's Office,
12 did you have any experience trying cases?

13 A. Not as first chair.

14 Q. Did you have any experience as a practicing
15 attorney trying cases before starting at the Federal
16 Defender's Office?

17 A. Through internships and --

18 Q. Were you a practicing attorney when you were an
19 intern?

20 A. I don't understand your question.

21 Q. You said through internships. Were you a
22 practicing licensed attorney when you were an intern?

23 A. No.

24 Q. Before starting at the Federal Defender's Office,
25 had you -- excuse me, had you ever argued in court?

1 A. I don't believe so.

2 Q. Had you ever examined a witness in court before
3 starting at the Federal Defender's Office?

4 A. I don't believe so.

5 Q. Did you have experience with civil or criminal
6 litigation as a practicing attorney before starting at
7 the Federal Defender's Office?

8 A. I would answer the same as I did before.

9 Q. Is that experience, was that as an intern?

10 A. Through law school and -- yes.

11 Q. And is it fair to say you weren't a practicing
12 attorney when you were still in law school?

13 A. I was not licensed, no.

14 Q. You were hired as a research and writing attorney
15 for the Charlotte office, correct?

16 A. Correct.

17 Q. And JP Davis was assigned as your mentor, correct?

18 A. My understanding is that he requested to be my
19 mentor.

20 Q. Did you personally witness him requesting to be
21 your mentor?

22 A. I believe from what I recall there was a meeting
23 that we had with, um, Mr. Davis and Attorney Martinez
24 and I believe it was discussed in that meeting.

25 Q. Did you personally request -- excuse me, let me

1 rephrase that.

2 Did you personally observe Mr. Davis request to be
3 your mentor?

4 A. From what I recall of that meeting, Mr. Martinez
5 said that that's what he had requested.

6 Q. Okay, so you didn't personally observe Mr. Davis
7 request to be your mentor, isn't that right? That was
8 my question.

9 A. Um, no, was I in that meeting? No, I didn't see
10 that.

11 Q. You went to lunch with Mr. Davis on four
12 occasions, correct?

13 A. I don't recall exactly how many.

14 Q. Does it sound right that it's approximately four?

15 A. Um, sure, yes.

16 Q. And those lunches were on December 19th, 2017,
17 March 1st, 2018, April 3rd, 2018, and May 18th, 2018,
18 correct?

19 A. I don't recall when they were.

20 Q. Does it sound like this could be relatively
21 accurate? Well let me -- strike that. Let me ask a
22 different question.

23 Do you have any reason to, um, dispute that those
24 are the correct dates of your lunches with Mr. Davis?

25 A. No.

1 Q. You talked about work during those lunches with
2 Mr. Davis, correct?

3 A. Yes.

4 Q. You talked about your caseload?

5 A. Probably.

6 Q. You talked about your career?

7 A. Probably.

8 Q. Did you ever decline any of Mr. Davis's
9 invitations to lunch?

10 A. I don't recall it being a choice, he was my
11 supervisor.

12 Q. But did you ever decline any of the invitations?
13 Did you ever tell him, "No, you didn't want to go," when
14 he asked you to lunch?

15 A. Not that I recall.

16 Q. Did you ever tell Mr. Davis that you weren't
17 comfortable getting lunch with him?

18 A. At that time, no.

19 Q. Well did you ever, at any time, tell him that you
20 weren't comfortable getting lunch with him?

21 A. (Pause.) Not that I recall, using those specific
22 words.

23 Q. Do you recall ever using any words that would have
24 conveyed that you were not comfortable getting lunch
25 with him?

1 A. (Pause.) Well that's a bit of a complicated
2 question because I do recall conveying to him that I was
3 uncomfortable. But, um -- and in fact, yes, I think he
4 did text me at one point and he did ask for lunch and I
5 was very uncomfortable at that time and I tried to
6 convey to him that I did not want to meet outside of the
7 office.

8 THE COURT: When was that text, ma'am?

9 THE WITNESS: Um, I believe my -- my dates are not
10 perfect, I apologize, but I believe it was in June of
11 2018. It was after he --

12 THE COURT: All right. Thank you.

13 THE WITNESS: It was after he said --

14 THE COURT: All right.

15 THE WITNESS: Yes, it was after --

16 THE COURT: We'll let Mr. Kolsky ask the
17 questions, but I just wanted to --

18 And that's the first time you had expressed some
19 reservations?

20 THE WITNESS: Um, no, your Honor, I don't think
21 that that's accurate. I think it was very clear to him
22 that I was distancing myself from him after he sent the
23 quid-pro-quo e-mail and he was aware of that. He --
24 throughout the month of June he was repeatedly asking me
25 to meet outside of the office to have drinks, to have

1 mentoring sessions, and that was after he had told me
2 that supposedly mentoring was over. So there wasn't any
3 basis professionally for him to do that. And I told him
4 no every time. But he continued asking I think like at
5 least 5 times over the course of a few weeks, um, in the
6 month of June 2020.

7 THE COURT: Thank you. Go ahead, Mr. Kolsky.

8 THE WITNESS: But I --

9 THE COURT: Let Mr. Kolsky ask the question.

10 Q. Ms. Strickland, you testified in response to the
11 Court's question about, um, expressing some sort of
12 reservation to Mr. Davis in June of 2018. Do you recall
13 specifically what you told Mr. Davis?

14 A. What I recall is I think as I just said, that, um,
15 he began --

16 Q. I'm asking you specifically what you told
17 Mr. Davis about getting lunch with him?

18 A. I said no to his invitations.

19 Q. This was in June of 2018?

20 A. From what I recall, yes.

21 Q. Do you recall being asked if you ever told
22 Mr. Davis you weren't comfortable getting lunch with him
23 at your deposition?

24 A. I don't know. I mean I would object, but that's
25 under seal. But, um --

1 THE COURT: Again, your objections -- only your
2 counsel may object.

3 MR. STRICKLAND: Objection, that's under seal. I
4 think we're getting well into what's covered in the
5 deposition testimony.

6 THE COURT: Well, I --

7 MR. STRICKLAND: It's under seal. I mean this
8 Court ordered the depositions to be sealed, and
9 defendants filed --

10 THE COURT: Well I -- I'm not taking sealed
11 documents. It's an appropriate question. I don't see
12 any reason not to try the case on the public record.
13 Overruled. She may answer.

14 MR. STRICKLAND: Your Honor, may I just be heard
15 on that point? Just one second.

16 THE COURT: One second, yes, go ahead.

17 MR. STRICKLAND: Mr. Kolsky has communicated to us
18 that the substance of sealed documents cannot be
19 communicated about in open court and I would agree with
20 that.

21 MR. KOLSKY: Your Honor, we have submitted the
22 depositions --

23 THE COURT: We're now having the trial. It's
24 overruled.

25 Go ahead, Mr. Kolsky.

1 MR. KOLSKY: Your Honor, may I approach the
2 witness to provide her her deposition transcript?

3 THE COURT: You may.

4 MR. STRICKLAND: Objection, your Honor, they did
5 not designate the depositions as an exhibit.

6 THE COURT: He's not using it as an exhibit, he's
7 using it impeach her.

8 (Hands to witness.)

9 Q. Ms. Strickland, would you please turn to Page 43
10 of the deposition transcript that I have handed you.

11 A. (Turns.)

12 MR. STRICKLAND: Again, your Honor, this is under
13 seal.

14 THE COURT: Well then to this extent I lift the
15 seal. It's an appropriate question.

16 MR. STRICKLAND: On November 16th we said that if
17 you're going to unseal anything, we'd put an objection
18 on the record that we wanted to pursue an interlocutory
19 appeal for anything unsealed. We have not been given
20 that opportunity. You granted that request.

21 THE COURT: All right. He may ask the question.
22 He's just having her --

23 Q. Ms. Strickland, would you please look at Page 43,
24 Lines 1 to 3, and tell me if I read it correctly.

25 Question, "Did you ever tell Mr. Davis that you

1 weren't comfortable getting lunch with him? Answer,
2 "No." Did I read that correctly?

3 A. You did read that correctly, but I think this
4 answer might not be accurate. I think there's a
5 document that could actually -- there's several
6 documents that could potentially refresh my recollection
7 on that.

8 Q. Ms. Strickland, did you testify truthfully at your
9 deposition?

10 A. Of course I did to the best of any ability, yeah.

11 Q. Thank you.

12 At the time of these lunches, you didn't consider
13 Mr. Davis's invitations to be acts of sexual harassment,
14 did you?

15 A. I'm sorry, I didn't hear the last part of your
16 question.

17 Q. At the time of these lunches, you didn't consider
18 Mr. Davis's invitations to have been acts of sexual
19 harassment, did you?

20 A. That question doesn't have an easy "yes" or "no"
21 answer. Did I become -- do I think that a supervisor
22 asking somebody to lunch is sexual harassment as a
23 general matter? No, I don't. Of course not. But in
24 this case I did begin to become concerned at a certain
25 point that it was getting a little too personal, and

1 then when he sent a quid-pro-quo e-mail, then, um, my
2 understanding of what was happening really changed at
3 that point.

4 Q. And I'm going to direct you to your deposition
5 transcript on Page 40, Line 24.

6 Question, "Do you believe those -- those lunches
7 were his invitation to have lunch with him, do you
8 believe that those were acts of sexual harassment?"

9 Answer, "Looking back I see them as red flags, but at
10 the time, no, I didn't think that."

11 Did I read that correctly?

12 A. Yes, and I believe that's accurate.

13 Q. Would you agree that before May 18th, 2018, you
14 had a friendly relationship with JP Davis?

15 A. Yeah, I mean you always want to be friendly and on
16 good terms with your supervisors, so, yes.

17 Q. And you had lunch with Mr. Davis on May 18th,
18 2018, correct?

19 A. Yes.

20 Q. In the car after that lunch, did you tell
21 Mr. Davis that you were not happy living in a different
22 city than your husband?

23 A. That is not exactly how I recall that
24 conversation.

25 Q. I'm directing you to Page 44, Line 2 of your

1 deposition transcript.

2 Question, "On the way back from the lunch, did you
3 tell Mr. Davis that you were not happy living in a
4 different city than your husband?" Answer, "Yes."

5 Did I read that correctly?

6 A. Yes, that's true.

7 Q. That was your testimony at your deposition?

8 A. Yes.

9 Q. Where did your husband live at the time?

10 A. South of Asheville.

11 Q. In Tryon?

12 A. Yes.

13 Q. And you lived in Charlotte?

14 A. Yes.

15 Q. And Tryon is closer to Asheville than to
16 Charlotte, correct?

17 A. Yes, it is.

18 Q. Did you -- in the car ride after that lunch, did
19 you tell Mr. Davis that you would need to be transferred
20 to Asheville at some point or else you would probably
21 need to leave the Federal Defender's Office?

22 A. At some point, yes. Not immediately. But at some
23 point eventually that's what I said. I mean
24 potentially, you know, even a couple of years down to
25 the line, I mean I wanted to keep working there, so.

1 Q. Your notes from -- your notes of that conversation
2 with Mr. Davis don't indicate anything about "a couple
3 years down the line," do they?

4 A. I think I used the word "eventually," which has
5 always been the case, yeah.

6 Q. Did you tell Mr. Davis that if you couldn't work
7 in Asheville, you at least wanted a pay raise?

8 A. I don't recall that being what I said. I don't
9 recall it being an either/or situation like that. What
10 I recall is that I was coming up on an annual review and
11 I was very excited about the possibility of requesting a
12 promotion. I don't specifically recall it being an
13 either/or, Asheville or promotion, thing because that's
14 just really not something I would have asked for. I
15 mean I believed that I should get the promotion anyway.

16 Q. Would you please take a look at Page 46, Line 12
17 of your deposition transcript.

18 A. (Looks.)

19 Q. Actually Line 15.

20 Question, "Yeah, did you tell Mr. Davis that if
21 you couldn't work in Asheville you at least wanted a pay
22 raise?" Answer, "Yes."

23 Did I read that correctly?

24 A. Yes, you read that correctly.

25 Q. Is it fair to say that we can at least agree that

1 during that car ride you discussed the idea that you
2 wanted a pay raise with Mr. Davis?

3 A. Oh, yes.

4 Q. And on your way back from lunch that day, did you
5 say to Mr. Davis words to the effect of "Any time you
6 want to buy me lunch or a drink, I'll take it"?

7 A. I'm sorry, could you repeat that question please?

8 Q. Yes.

9 On your way back from lunch that day, did you say
10 to Mr. Davis words to the effect of "Any time you want
11 to buy me lunch or a drink, I'll take it"?

12 A. I don't specifically recall saying that.

13 Q. Is it possible that you did?

14 A. Anything is possible.

15 Q. And after you returned to the office on May 18th,
16 that afternoon Mr. Davis sent you an e-mail with the
17 subject "Mas dinero," correct?

18 A. Yes, he did.

19 Q. What does "Mas dinero" mean in Spanish?

20 A. "More money."

21 Q. And in the e-mail Mr. Davis uses the phrase "pay
22 for stay," correct?

23 A. Yes, he did.

24 Q. Given your conversation with Mr. Davis at lunch
25 that day, is it possible that by saying "pay for stay"

1 --

2 MR. STRICKLAND: Objection, your Honor.

3 THE COURT: Sustained.

4 MR. STRICKLAND: This is --

5 THE COURT: Sustained.

6 MR. STRICKLAND: Mr. Cooper -- Mr. Strickland, you
7 just won that one. Sustained.

8 Mr. Kolsky, I -- what possible -- that does not
9 help the Court. Go ahead.

10 MR. KOLSKY: Understood, thank you, your Honor.

11 Q. You're alleging in this case that JP Davis
12 sexually harassed you in part by offering to get a drink
13 with you on three occasions in June of 2018, correct?

14 A. Yes.

15 Q. You'd gotten alcoholic drinks with Mr. Davis
16 before June 2018, right?

17 A. In the past, yes.

18 Q. In October of 2017, you traveled to Little Rock
19 Arkansas to conduct witness interviews for a case,
20 correct?

21 A. I remember going on that trip. I couldn't tell
22 you exactly when it was.

23 Q. Approximately October of 2017, is that fair?

24 A. Um, sure, that's fair.

25 Q. And Mr. Davis was there on that trip, right?

1 A. Yes.

2 Q. And another Federal Defender's Office employee,
3 Tara Parish, was there too, correct?

4 A. Yes, we were both staff assigned to the case.

5 Q. And you got alcoholic drinks with Mr. Davis and
6 Ms. Parish on that trip, correct?

7 A. It wouldn't surprise me. I mean it's hard for me
8 to recall the specifics.

9 Q. In January of 2018, do you recall a criminal case
10 against Mr. Richard Davis resulting with a plea bargain?

11 A. Again I don't know exactly when it was, but I mean
12 I do remember that case, um, that it resulted in a plea.

13 Q. And it would have been roughly around January of
14 2018?

15 A. I can't dispute that.

16 Q. Did the entire team go out and get drinks after
17 that?

18 A. I do remember the entire team getting drinks to
19 celebrate that case, that seemed to be kind of something
20 everybody did in the office.

21 Q. And JP Davis was there?

22 A. Yeah, I don't specifically recall, but he was on
23 the case, so that would not surprise me.

24 Q. And did you get alcoholic drinks there with the
25 team?

1 MR. STRICKLAND: Objection, your Honor, relevance.

2 What does this have to do with the --

3 THE COURT: Please, if I want any argument, I will
4 call for it.

5 You may have it, though there are limits to it.

6 She's testified that it's a social matter. She had
7 drinks with them on various occasions.

8 MR. STRICKLAND: And 403 as well. This seems
9 prejudicial then. If you're describing --

10 THE COURT: As a judge once told me, one of the
11 tests whether something is relevant is in fact if it is
12 prejudicial. Under 403 it has to substantially outweigh
13 the probative value. Here it does not. But I think
14 we're approaching the limits of what Mr. Kolsky can
15 inquire of.

16 Go ahead, Mr. Kolsky.

17 Q. Ms. Strickland, did you have alcoholic drinks
18 there with the team?

19 A. I don't recall the specifics of that, but it
20 wouldn't surprise me because that's what everyone did.

21 Q. And you examined a witness at a suppression
22 hearing on or about May 15th, 2018, right?

23 A. I couldn't tell you the exact date, but that
24 sounds plausible.

25 Q. And after that lunch -- or after that hearing, you

1 got lunch with Mr. Davis and Ms. Parish, correct?

2 A. Um, probably.

3 Q. And at the end of that lunch, did you suggest
4 getting a drink with Mr. Davis?

5 A. Um, it wouldn't surprise me.

6 Q. And you did get an alcoholic drink with Mr. Davis
7 at an establishment called "Stoke," correct?

8 A. I really don't remember any of the specifics of
9 that, but -- if that's what you're saying, I don't have
10 a reason to deny it, so.

11 Q. Wouldn't you agree that it was not unusual for
12 attorneys in the Federal Defender's Office to get
13 drinks together?

14 A. It was not -- it was definitely a culture in the
15 office, I would agree with that.

16 | (Pause.)

17 MR. KOLSKY: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 MR. STRICKLAND: Is it possible that the exhibit
21 could be identified for me?

22 THE COURT: You'll get to see every exhibit that
23 he -- every document that she has on the stand at the
24 beginning of your cross. He needn't -- I'm not
25 requiring him to do it.

1 Go ahead, Mr. Kolsky.

2 MR. KOLSKY: I can provide counsel with that, your
3 Honor.

4 THE COURT: Fine.

5 Q. Ms. Strickland, I've handed you what's currently
6 marked as Exhibit DN, Defendant's Exhibit DN.

7 A. (Looks.)

8 Q. Is this a series of text messages between you and
9 JP Davis dated between October 31st, 2017 and June 29th,
10 2018?

11 A. May I have an opportunity to review the document?

12 Q. Yes.

13 A. Thank you. (Looks.)

14 MR. STRICKLAND: I'm sorry, which exhibit number
15 again?

16 THE COURT: DN. For identification.

17 (Pause.)

18 MR. KOLSKY: Your Honor, we appear to have lost
19 the video connection with the Court.

20 THE COURT: Everything appears the same to me. I
21 can see you all. Can you see me?

22 MR. KOLSKY: No, your Honor.

23 THE CLERK: No, your Honor, we cannot. If you
24 don't mind giving me just one moment.

25 (Pause.)

1 THE COURT: Shall we take the morning recess at
2 this time so as not to waste time and she can look over
3 the document, is that satisfactory? All right.

4 MR. KOLSKY: Yes, your Honor.

5 THE COURT: We started late, so we'll take only a
6 20-minute recess. We'll recess until 5 minutes after
7 11:00. We'll stand in recess.

8 THE CLERK: All rise.

9 (Recess, 10:45 a.m.)

10 (Continuing, 11:05 a.m.)

11 THE COURT: Mr. Kolsky, you may continue.

12 MR. STRICKLAND: Your Honor, this exhibit contains
13 my communications about FDO clients, I think this
14 thing's privileged. I mean at one point it says
15 "Prosecutor is offering low-end guideline plus 3 months
16 home confinement and further supervision." And then it
17 says --

18 THE COURT: Well I don't know that you have --
19 Mr. Strickland, I don't know that you have standing, I
20 think we'll let the judiciary make that determination.
21 I think there is something to what you say and if I need
22 to redact any portions of it, I will do so.

23 Go ahead, Mr. Kolsky.

24 MR. KOLSKY: Thank you, your Honor.

25 Q. Ms. Strickland, where we left off, the question I

1 had asked you was as to Defendant's Exhibit DN.

2 Is this a series of text messages between you and
3 JP Davis dated between October 31st, 2017 and June 29th,
4 2018?

5 A. Yes, and in fact his lunch invitation that I was
6 referring to earlier is on the last page.

7 Q. Okay, thank you, Ms. Strickland.

8 MR. KOLSKY: Your Honor, I move to admit Exhibit
9 DN into evidence.

10 THE COURT: Any objection?

11 MR. STRICKLAND: I would reiterate that I think
12 these criminal defendants have a basis to assert their
13 attorney-client privilege. I just don't understand why
14 --

15 THE COURT: Wait. Wait. Wait. Yes. I will
16 receive it subject to redacting anything that, um,
17 discusses a particular case. But otherwise it's
18 admitted with that redaction, Exhibit 141 -- 142 in
19 evidence.

20 Proceed.

21 (Exhibit 142, marked.)

22 MR. STRICKLAND: Your Honor, just to clarify
23 further, the defendant's already filed this on the
24 docket unredacted, it's been out there since this
25 summer. Those are the summary judgment filings.

1 THE COURT: Well I will redact it.

2 Go ahead, Mr. Kolsky.

3 MR. KOLSKY: And just to state our position, your
4 Honor, we have reviewed the exhibits and, um, do not --
5 we have redacted from the exhibits any information that
6 we consider to be privileged.

7 THE COURT: Well that you consider. If I feel I
8 need to redact it, I will.

9 Have in mind we're going to try this case for 5
10 days, no longer. Let's move on.

11 MR. KOLSKY: Mr. Spears, please display Exhibit
12 DN, which is now Exhibit 142.

13 (Pause.)

14 MR. KOLSKY: Your Honor, we're having some
15 technical issues.

16 THE COURT: Well I have the exhibits, so I can
17 find it. Go ahead.

18 MR. KOLSKY: Okay, we'll just proceed with the
19 paper copies.

20 Q. Ms. Strickland, please turn to Page 12.

21 A. (Turns.)

22 Q. Which is Bates-stamped US 2902. And there's a
23 picture on the bottom of that page, continuing on to the
24 next page. Did you send that picture to Mr. Davis on
25 March 15th, 2018?

1 A. Yes, that's my cat.

2 Q. And it's a picture of a cat and a bottle of gin,
3 correct?

4 MR. STRICKLAND: I renew my objection to the
5 relevance and prejudicial effect of this. I thought --
6 we've already covered the social drinking and the --

7 THE COURT: You're riding two horses. If it's so
8 prejudicial, then almost by definition it's relevant.
9 It's not too prejudicial.

10 But I do think there is a limit to this,
11 Mr. Kolsky. But go ahead. The document's in evidence.

12 MR. KOLSKY: I'd like to ask the plaintiff a few
13 questions on this document, your Honor.

14 Q. Ms. Strickland, underneath that picture you wrote,
15 "Can't remember if I sent you a gin pic," correct?

16 A. That's what it appears to be, yeah.

17 Q. And then you sent another picture of the gin
18 bottle, right?

19 A. That is what it appears to be.

20 Q. And then turning to the next page, Page 14, or US
21 2904, Mr. Davis -- Mr. Davis wrote, "All right, now we
22 have to throw down for real." And you responded, "Yeah,
23 but you need to get a full bottle first," smiley face,
24 is that right?

25 THE COURT: Now have in mind -- I think we have

1 reached the limit, Mr. Kolsky. Move on. You've got it
2 in evidence and it's my duty to read it and I will.

3 Q. Is it fair to say you felt comfortable drinking
4 with Mr. Davis?

5 A. At this time, no, it's not clear to me what the
6 dates are. But, I mean, yeah.

7 Q. And did you ever tell Mr. Davis that you were not
8 comfortable getting a drink with him?

9 A. I believe I did. Later I declined his invitations
10 and distanced myself after he sent me a quid-pro-quo
11 e-mail.

12 Q. But did you ever tell him that you were not
13 comfortable getting a drink with him?

14 A. I don't know if I used the word "uncomfortable,"
15 what I recall is that I repeatedly declined his
16 invitation in the most polite way that I could.

17 Q. You're referring to June of 2018?

18 A. If that was the time range, um, yeah, I mean I
19 don't specifically recall the date. But it was after he
20 sent the quid-pro-quo e-mail.

21 Q. Ms. Strickland, you were asked about this at your
22 deposition, correct?

23 A. I -- I don't specifically recall. I'm sorry. It
24 wouldn't surprise me.

25 Q. Would you please turn to Page 56 of your

1 deposition transcript.

2 A. (Turns.)

3 Q. Line 10 on Page 56.

4 Question, "Did you specifically tell him you
5 didn't want to get a drink with him?" Answer, "No."
6 Question, "And did you specifically tell him you weren't
7 comfortable getting drinks with him?" Answer. "No."

8 MR. STRICKLAND: Objection, your Honor. I thought
9 you already ordered -- ordered that this wasn't -- I
10 don't understand why we just keep asking the alcoholic
11 questions.

12 THE COURT: We haven't -- we haven't heard the
13 question, alcoholic or otherwise. Let's hear the
14 question.

15 Q. Ms. Strickland, was that your testimony at
16 deposition?

17 THE COURT: Well if that's it, then sustained.
18 Sustained. I think we've gone far enough with this.
19 It's sustained.

20 Go ahead, Mr. Kolsky.

21 Q. Ms. Strickland, um, you're claiming that part of
22 the sexual harassment that you're alleging in this case
23 was when Mr. Davis offered you a ride home from the
24 office on June 21st, 2018, correct?

25 A. Um, that was the lobby incident? I just -- I

1 don't recall the specific dates of things, so I don't
2 want to testify inaccurately.

3 Q. Is it correct that you're alleging that part of
4 what you're describing as sexual harassment in this case
5 was when Mr. Davis offered you a ride home and
6 subsequently was in the lobby on your way out, um, which
7 occurred on June 21st, 2018. Does that sound right?

8 A. Yes, when he waited for me in the lobby after
9 work, um, in the evening, when everyone else had left
10 and I had already said no to him. Yes, that was, um,
11 definitely intimidating.

12 Q. And you had requested rides from Mr. Davis before
13 that evening, correct?

14 A. Yes.

15 Q. About how many times had you asked Mr. Davis for a
16 ride?

17 A. I really couldn't tell you.

18 Q. Do you have any reason to doubt it was about 10
19 times?

20 A. That wouldn't surprise me.

21 Q. And, for example, you asked him to drive you home
22 from office happy hours?

23 A. I don't recall specifics, but it wouldn't surprise
24 me.

25 Q. Okay. Mr. Davis texted you on June 29th, 2018 to

1 meet with you, correct?

2 A. Um, may I look at this exhibit to --

3 Q. Yes.

4 A. I just don't remember, um, like specific dates so
5 it's hard for me to, um --

6 Q. That's fine.

7 A. I'm sorry, the question -- can you please repeat
8 the question?

9 Q. Mr. Davis texted you on June 29th of 2018 to meet
10 with you?

11 A. That is what it appears to be, yeah.

12 Q. Okay. And you contend that that was part of the
13 sexual harassment you're alleging in this case, correct?

14 A. Yes, from what I recall about this incident, um,
15 even though there's so-called --

16 Q. I'm not asking that, I'm just asking if that's
17 part of the sexual harassment that you're alleging?

18 A. Yes.

19 Q. And Mr. Davis was asking to meet with you to
20 discuss a work-related topic, correct?

21 A. From what I recall he said he wanted to have a
22 mentoring session a distance from work. And when I
23 called in sick, in part because I was trying to avoid
24 him, he said, um, "Can we reschedule? And I'm free all
25 day, including early morning, lunch, and evening. I'm

1 hoping this will be helpful for you. Please don't be
2 overanxious about it."

3 Q. Isn't it true there were occasions when you asked
4 to meet with Mr. Davis in June of 2018?

5 A. I'm sure I asked to meet with him about like a
6 case we were assigned to. I don't recall asking to meet
7 him like socially or outside of the office about
8 anything.

9 Q. Did you request to meet with him about a
10 "work-related topic," is that fair to say?

11 A. I don't recall requesting to meet with him, I
12 recall that we were assigned to cases that needed work
13 to be done. So I mean if that's a "request," then, you
14 know, okay.

15 Q. Did you write to him, on June 18th, 2018, "At some
16 point we should talk about this too, to be honest I'm
17 confused about it"?

18 A. I don't recall the specifics, but if I e-mailed
19 him about a case, yeah, I'm not going to deny that.

20 Q. And you met Tony Martinez on July 2nd, 2018,
21 correct?

22 A. Um, that sounds right.

23 MR. KOLSKY: Your Honor, may I approach the
24 witness?

25 THE COURT: You may.

1 Q. Ms. Strickland, I've handed you what's currently
2 marked as Defendant's Exhibit DP -- excuse me, I'm
3 sorry, Exhibit GV.

4 THE COURT: Gv for identification.

5 MR. KOLSKY: Yes, GV.

6 Q. Are these your handwritten notes of the meeting
7 between you and Mr. Martinez on July 2nd, 2018?

8 A. Could I just have a moment please to review it?

9 Q. Yes.

10 A. Thank you. (Reads.) Um, yes, these are my notes.

11 MR. KOLSKY: Your Honor, I move to admit Exhibit
12 GV into evidence.

13 THE COURT: Any objection?

14 (Pause.)

15 MR. STRICKLAND: Not from me, but plaintiff is
16 also co-counsel in this case and I think she ought to
17 have an opportunity to assert an objection.

18 THE COURT: Well, I --

19 THE WITNESS: I don't have any objection.

20 THE COURT: Be that as it may, you're making the
21 objections to her interrogation. There's no objection.
22 It's admitted Exhibit 143 in evidence.

23 (Exhibit 143, marked.)

24 MR. STRICKLAND: Can I just ask a point of
25 clarification?

1 THE COURT: Always. Yes.

2 MR. STRICKLAND: So whenever you granted the
3 reopened deposition, it was because the plaintiff did
4 not assert objections on her behalf, I think you
5 referred to it as "a licensed attorney answered the
6 question." I think she ought to have an opportunity to
7 assert objections, particularly whenever all four of her
8 counsel --

9 THE COURT: Mr. Strickland, 1, that's not a
10 question for clarification, you're arguing with respect
11 to the Court's ruling. The normal procedure, and a
12 procedure that I will follow here, is that she is now on
13 the witness stand, you'll make the objections. When
14 another witness is on the witness stand, one or the
15 other of you will make the objections. It's not a
16 tag-team operation.

17 The government has a number of attorneys, the same
18 rule applies to them. Whoever has taken the witness for
19 interrogation, for instance Mr. Kolsky, when we get to
20 your examination of this witness, only Mr. Kolsky is
21 going to make the objections. That's the rule that is
22 followed uniformly in my practice and that's the rule I
23 follow here.

24 Go ahead, Mr. Kolsky.

25 MR. KOLSKY: Mr. Spears, please display Exhibit

1 GV, which is now Exhibit 143.

2 (On screen.)

3 Q. Ms. Strickland, according to these notes,
4 Mr. Merchant had asked you if you were reporting
5 harassment or sexual harassment, correct?

6 A. Yes, they say he asked, "Is this harassment/sexual
7 harassment?"

8 Q. And you said -- and you responded to him, "I don't
9 feel we are there yet, I don't want to use words like
10 that to trigger something," correct?

11 A. Yes, I said I am self-managing and that everyone
12 deserves the benefit of me trying to resolve the issue
13 informally and at the lowest level.

14 Q. Well don't you say, "I am self-managing and that
15 everyone deserves the benefit of me having a
16 conversation"?

17 A. Yes, exactly.

18 Q. A conversation with him first to try to resolve
19 the issue, is that correct?

20 A. Yes, exactly.

21 Q. And "him" refers to Mr. Davis, correct?

22 A. Um, yes.

23 Q. So you wanted to have a conversation with
24 Mr. Davis to try to resolve the issue, right?

25 A. Yes, I did.

1 Q. And you also told Mr. Martinez, "I don't want you
2 to do anything except keep my confidence and so you'll
3 know if something happens," correct?

4 A. That is correct. I went to him because that was
5 the advice that I was given from Laura Miner, was to try
6 to resolve it informally and at the lowest level
7 possible, to try to have a conversation with him. And
8 she said, "Go to Tony first, but don't make a formal
9 report." So that's what I did.

10 Q. At this July 2nd meeting, did you tell
11 Mr. Martinez about the "Mas Dinero" e-mail from
12 Mr. Davis?

13 A. I don't recall that specifically coming up, no.

14 Q. And you met with Mr. Martinez and Mr. Davis a few
15 days later on July 5th, 2018, correct?

16 A. That sounds right. I don't recall the exact date.

17 Q. Okay. Did you ever meet again with Mr. Davis
18 after July 5th?

19 A. I'm not sure. You mean like in a work meeting or
20 -- um, I'm not sure I understand the question.

21 Q. Did you meet in person with Mr. Davis after July
22 5th, um, one on one, a one-on-one meeting between you
23 and Mr. Davis?

24 A. No, I recall that he asked me to meet with him one
25 on one and, um, that's when I decided I need to try to

1 get advice from the Fair Employment Opportunity Office
2 of the AO.

3 Q. And when did he ask you to meet one on one, wasn't
4 that in June of 2018?

5 A. No, um, it was in July after -- it was a week and
6 a half, two weeks I think after this when Tony had told
7 me that he was going to separate us and then he assigns
8 me back, um, under JP's team, and then JP immediately
9 began requesting to meet with me alone again about his
10 team. And so that's when I felt like my attempts to try
11 to distance myself and resolve the issue informally were
12 not working, that Tony was not addressing my complaints
13 appropriately. And so, um, that's when I reached out to
14 the AO for advice.

15 Q. Understood. So with regard to that e-mail in late
16 July, you didn't end up meeting with Mr. Davis in
17 response to that, correct?

18 A. No, because I called in sick to avoid meeting with
19 him, which I think was pretty clear to him as well that
20 I was avoiding him.

21 Q. Did you ever speak with Mr. Davis by phone after
22 July 5th, 2018?

23 A. By phone? Not that I recall.

24 Q. You would agree that Mr. Martinez reclassified you
25 to an Assistant Federal Public Defender because it was

1 "to the Office's benefit for purposes of case-weight
2 measurement," correct?

3 A. I believe that's what he said in his e-mail, yeah,
4 that it was not a promotion, it was just to maintain the
5 Office's work measurement.

6 Q. And would you agree that immediately before you
7 were reclassified to Assistant Federal Defender, your
8 salary as a Research and Writing Attorney was \$107,319
9 per year, is that right?

10 A. I'm sorry, I couldn't tell you the specifics. But
11 I don't have any reason to deny that.

12 Q. Okay. And you would agree that the amount that
13 you were paid at that time included locality pay,
14 correct?

15 A. Um, yeah, at that time, yes, there was a locality
16 adjustment. What I recall is they tried to take it away
17 later, but --

18 Q. And then when you became an Assistant Federal
19 Defender after you were reclassified, your salary was
20 still \$107,319 per year, correct?

21 A. Yeah, what I recall was that the form said that
22 that was --

23 Q. Well that's not my question, Ms. Strickland, I'm
24 just asking what your salary was after you were
25 reclassified? Do you agree that it was --

1 MR. STRICKLAND: Objection, your Honor, can she
2 answer the question? Arguably the --

3 THE COURT: Just a moment. Just a moment. You
4 object. The objection's overruled. You'll have a
5 chance to interrogate this witness.

6 You may go over it. Go ahead, Mr. Kolsky.

7 Q. Ms. Strickland, when you became an Assistant
8 Federal Defender, your salary was still \$107,319 per
9 year, correct?

10 A. My salary did not -- my total salary did not
11 change, that is correct. The locality adjustment was
12 not part of that.

13 MR. KOLSKY: Your Honor, I move to strike the last
14 part of the witness's testimony about --

15 THE COURT: All right. In the exercise of
16 discretion, that may stand.

17 Q. Ms. Strickland, you sent Tony Martinez an e-mail
18 on August 10th, 2018, correct?

19 A. I mean again I -- if you're saying it was that
20 date, that sounds right to me.

21 Q. Do you recall sending Mr. Martinez an e-mail
22 around August 10th, 2018 in which you made certain
23 requests?

24 A. I remember sending him an e-mail, um, based on the
25 advice of Nancy Dunham, that I needed to really tell him

1 what I was asking for and why. So I said that based on
2 these harassing behaviors that I had reported and the
3 lack of meaningful action up to that point, that I was
4 making certain requests based on a conversation that we
5 had that I thought we had in agreement.

6 Q. And in that e-mail you requested to work remotely,
7 right?

8 A. I requested to work remotely until he could figure
9 out an office-space issue in Asheville.

10 Q. Do you recall if your e-mail said -- didn't your
11 e-mail say "A long-term resolution that allows me to
12 work remotely and report to the Appellate Chief in
13 Asheville is fine with me"?

14 A. If he could not find space in Asheville, then,
15 yeah, because I didn't want to work in -- not I didn't
16 want to, I couldn't work in Charlotte anymore with JP
17 the way he was behaving.

18 Q. But just to be clear, your e-mail did say "A
19 long-term resolution that allows me to work remotely and
20 report to the Appellate Chief in Asheville is fine with
21 me," is that correct?

22 A. Based on his statement that he does not believe he
23 had office space, yeah.

24 Q. And Mr. Martinez did allow you to telework
25 temporarily during the pendency of the EDR

1 investigation, correct?

2 A. Um, yes.

3 Q. Okay. And that was in his response to you on
4 August 17th, 2018, does that sound correct?

5 A. Um, without having it in front of me, that sounds
6 right.

7 Q. Did you e-mail Nancy Dunham on August 9th, 2018?

8 A. I'm sorry, I don't recall the specifics of it.
9 I'm sure I e-mailed her. I don't know exactly when.

10 Q. Ms. Strickland, I've handed you a document. And I
11 direct your attention to Page US 977.

12 A. (Looks.) May I have a moment to review it?

13 Q. Yes.

14 A. Thank you.

15 A. (Looks.) Okay.

16 MR. STRICKLAND: Does this exhibit have a number
17 or a letter?

18 THE COURT: That's an appropriate --

19 MR. STRICKLAND: I would want to know if I'm to
20 make an objection.

21 THE COURT: -- yes, that's an appropriate
22 objection.

23 MR. KOLSKY: Your Honor, this is just to refresh
24 her recollection.

25 THE COURT: All right, you've identified it.

1 MR. STRICKLAND: If it's to refresh her
2 recollection, may I see it as well?

3 THE COURT: You may prior to your, um, cross-
4 examination you may certainly see it. Anything that she
5 is shown you may see.

6 MR. STRICKLAND: But I need to be able to make
7 objections to the document itself.

8 THE COURT: She isn't testifying from the
9 document, he represented he showed her a document to
10 refresh her recollection. So we'll see whether that
11 document refreshes her recollection. Then we'll get a
12 question as to what her testimony is with her
13 recollection refreshed. Maybe the document doesn't
14 refresh her recollection, in which case that's it for
15 this document. But she's looking it over. Let's see.

16 Does that refresh your recollection, ma'am?

17 THE WITNESS: (Looks.) What is -- what is my
18 memory that is being --

19 Q. Ms. Strickland, the question I asked is whether
20 you e-mailed Nancy Dunham on August 9th, 2018, and I'm
21 directing you to Page US 977. Does that refresh your
22 recollection as to whether you e-mailed Ms. Dunham on
23 August 9th, 2018?

24 A. Yes, if I could just have one moment please, it's
25 a long document.

1 Q. Well I'm only asking you about the e-mail on Page
2 977.

3 A. (Looks.) Yes, it does appear that there is, um --
4 I'm sorry, did you say August 7th or August 9th?

5 Q. August 9th.

6 A. Okay, yes, it does appear there's an e-mail, um,
7 dated August 9th in this chain.

8 Q. And you had reached out to Ms. Dunham for advice
9 on the situation with Mr. Davis, correct?

10 A. Yes.

11 Q. And in your e-mail to Ms. Dunham, did you write,
12 "If I have to work remotely until there is space in
13 Asheville, that is completely fine with me"?

14 MR. STRICKLAND: That doesn't seem like refreshing
15 recollection, it seems like it's reading from the
16 document.

17 THE COURT: Well she may not read from the
18 document, but he may ask the question.

19 Is that what you said to her?

20 A. It appears what I said is if I have to work
21 remotely until there is space in Asheville, that is fine
22 with me.

23 THE COURT: Is that what you remember? Is that
24 your memory?

25 THE WITNESS: I mean I have no reason to deny that

1 that's what I said, so, yeah.

2 THE COURT: All right, that may stand.

3 Q. You said "That is completely fine with me,"
4 correct?

5 A. Well compared to Charlotte, yeah, it was
6 completely fine with me.

7 Q. Okay. You met with Circuit Mediator Ed Smith on
8 February 7th, 2019, correct?

9 A. Um, that sounds right. I couldn't tell you the
10 specific date.

11 Q. And at that meeting did you tell Mr. Smith that
12 you prefer teleworking and you work better on your own?

13 A. Yeah, I mean what I recall is I think I said that
14 in the context of the conversation where it was very
15 clear to me that I was going to have to leave, resign
16 from that office, because they weren't going to do
17 anything about my complaints. So I was trying to figure
18 out some sort of solution where I could just stay on
19 telework until I could have some sort of transition.

20 Q. Did you ever tell Mr. Martinez that you were not
21 happy teleworking?

22 A. I'm sorry, can you repeat that please?

23 Q. Did you ever tell Mr. Martinez that you were not
24 happy teleworking?

25 A. Well I asked for a transfer to Asheville, so I

1 mean I think, whenever I brought it up, I said, "If
2 there was no office space and that was the only
3 alternative."

4 Q. Do you recall being asked that question at your
5 deposition, Ms. Strickland?

6 A. Um, not specifically, but I won't deny it if you
7 say I was. Oops. I'm sorry.

8 Q. Please turn to Page 104 of your deposition
9 transcript.

10 A. Sorry, I'm trying to find a place for all of these
11 exhibits. Okay, what is the page number again please?

12 Q. Page 104, Line 19.

13 A. (Turns.)

14 Q. I'm going to read from the transcript, I want you
15 to tell me if I read it correctly.

16 Question, "Did you tell Mr. Martinez that you
17 weren't happy teleworking?" Answer, "I did not speak to
18 Mr. Martinez once the -- that I call after the EDR
19 process started."

20 Did I read that correctly?

21 A. Right. Yeah, that's true.

22 Q. Okay. At the Federal Defender's Office, would it
23 be accurate to say you "Assisted in all aspects of trial
24 and appellate litigation, including motions practice and
25 trial preparation, appellate briefing, and court

1 hearings?"

2 A. Um, I believe that's a line from my resume, so,
3 yes.

4 Q. And your resume's accurate, correct?

5 A. Um, to the best of my knowledge, yes.

6 Q. Okay. In January 2019, did you decline an
7 opportunity to argue a case in the Fourth Circuit?

8 A. Well what I recall is that after the argument
9 notice came out, I had briefed the case, um, Josh had
10 signed himself up for the argument, and then by the time
11 he reached out to me and said, "Oh, do you want to do
12 the argument?" um, it just, um -- it made me feel
13 uncomfortable. I was afraid that I was being set up for
14 failure and I didn't want to do that to the client. So
15 I declined.

16 THE COURT: Who is "Josh," ma'am? Who is "Josh"?

17 THE WITNESS: He is the Appellate Chief.

18 THE COURT: And his full name?

19 MR. KOLSKY: Is that Josh --

20 THE COURT: I'm asking the witness.

21 THE WITNESS: Yes, Joshua Carpenter.

22 THE COURT: Thank you.

23 Go ahead, Mr. Kolsky.

24 MR. KOLSKY: Your Honor, may I approach the
25 witness?

1 THE COURT: You may.

2 Q. Ms. Strickland, I've handed you what's currently
3 marked as Exhibit EB.

4 A. (Looks.)

5 Q. Is this an e-mail exchange between you and Josh
6 Carpenter on January 11th, 2019?

7 A. Now if I could just take a moment to review it?

8 Q. Yes.

9 A. Thank you. (Reads.) Okay.

10 Q. And is that an e-mail chain between you and Josh
11 Carpenter on January 11th, 2019?

12 A. Um, yes, that's what it appears to be.

13 MR. KOLSKY: Your Honor, I move to admit Exhibit
14 EB into evidence.

15 THE COURT: No objection?

16 MR. STRICKLAND: Give me one moment, your Honor.

17 THE COURT: Of course.

18 MR. STRICKLAND: "EV"?

19 MR. KOLSKY: "EB," as in "boy."

20 MR. STRICKLAND: Oh, okay.

21 (Pause.)

22 MR. STRICKLAND: I'm a little concerned about
23 hearsay issues given there's statements by Josh.

24 THE COURT: Oh, well so much of his -- so much of
25 the document as reflects what Mr. Carpenter said is

1 hearsay, I'm only going to admit it for the fact that it
2 was said. The rest of it is her admission, so it's not
3 a hearsay issue.

4 With that limitation, no objection?

5 MR. STRICKLAND: No objection, your Honor.

6 THE COURT: It is admitted with that limitation.
7 Give it Exhibit 144.

8 (Exhibit 144, marked.)

9 Q. Ms. Strickland, this e-mail chain is in reference
10 to an appellate argument in a case that you had worked
11 on, correct?

12 A. Um, yeah.

13 Q. Did you interpret Mr. Carpenter's statements in
14 this e-mail chain as indicating that he did not want you
15 to do the appellate argument?

16 A. Well I think the fact that it had been months
17 since he signed himself up for it, it -- I mean he said
18 he wanted to double-check to make sure I didn't want to
19 argue it.

20 Q. And so did you interpret that as meaning that he
21 didn't want you to do the argument?

22 A. I don't know what he wanted. I don't know what is
23 in his mind. So I can't speak to that.

24 Q. Did you testify at your deposition that you did
25 interpret this e-mail chain as indicating that he didn't

1 want you to do the appellate argument?

2 A. That he did not want me to do it?

3 Q. Correct.

4 A. That wouldn't surprise me, because that is how I
5 felt. Yes.

6 Q. At the time you were an Assistant Federal
7 Defender, had you served as first chair for any felony
8 cases from start to finish?

9 A. No.

10 Q. In June of 2018, did you express concerns to Tony
11 Martinez about whether you had enough training to handle
12 cases involving supervised release violations and
13 illegal reentries?

14 A. I'm not sure. Can you remind me of just the
15 timeframe of when that was -- would have been? It might
16 help me remember.

17 Q. So I'm asking you about June of 2018.

18 A. Right. So after I was removed from the, um, the
19 case that we've all been discussing, I was very
20 concerned because it seemed like I was getting
21 conflicting messages about whether I wasn't even able to
22 do research and writing on a case versus, you know, a
23 couple of weeks later I was assigned like 6 cases. And
24 so, yeah, I was concerned about training.

25 Q. But you were specifically concerned -- the cases

1 that you're referring to that you were assigned, did
2 those involve supervised release violations and illegal
3 reentries?

4 A. I don't recall the specifics. I'm sorry.

5 Q. Ms. Strickland, would you please turn to Page 125
6 of your deposition transcript.

7 A. (Turns.) Sorry, what page again?

8 Q. 125.

9 A. 125. Okay. (Turns.)

10 Q. Line 5, Question, "In June 2018, did you express
11 concerns to Tony Martinez about cases you were handling
12 involving supervised release violations and illegal
13 reentries?" Answer, "I did."

14 Did I read that correctly?

15 A. Right. Yeah, and what it says here is I think
16 with what had just happened with me being taken off of
17 another case, um, even in a research and writing
18 capacity, I was concerned about feeling like whether
19 they have given me sufficient training. Yeah.

20 Q. Would you agree that cases involving supervised
21 release violations and illegal reentries are among the
22 most basic cases handled by the Federal Defender's
23 Office?

24 A. I mean I don't -- I really couldn't tell you. I
25 mean I also think research and writing work is pretty

1 basic, but I was also taken off of that case. So it's
2 hard for me to compare.

3 Q. Did you call Tony Martinez the night before your
4 first witness examination in May of 2018?

5 A. That may very well be, yeah.

6 Q. And did you tell him that you didn't feel prepared
7 to do the examination?

8 A. (Pause.) I'm trying to remember the details of
9 what we discussed. I do remember feeling like I didn't
10 trust the way that JP was trying to help me prepare, so
11 I reached out to another attorney, um, Jeff King, for
12 advice, and he did a mock examination with me and, um,
13 he -- when we actually went into the courtroom, you know
14 everyone said it was fantastic and basically the witness
15 was discredited on the stand. So, yeah, I mean I'm sure
16 I wanted to do really well for, you know, cross-
17 examination in court, so it wouldn't surprise me if I
18 reached out to him about that.

19 Q. And you believe that you were prepared to have
20 your own caseload in August of 2018, correct?

21 A. I'm sorry, can you repeat that?

22 Q. You believed that you were prepared to have your
23 own caseload in August of 2018, correct?

24 A. Yeah, I mean certainly in appeals, I think. I
25 think on the trial side I definitely wanted more

1 training. But, you know, because of the situation and
2 the harassment and everything, I didn't really feel like
3 I had a future, like I could keep pursuing that, so I
4 decided to, um, turn my attention to appeals, which I
5 think I was well-qualified to handle my own caseload on
6 that. I mean having served as a law clerk and seeing
7 probably hundreds of oral arguments and drafted
8 opinions.

9 Q. You left the Federal Defender's Office in March of
10 2019, right?

11 A. Um, yes.

12 Q. And you were not in contact with JP Davis in March
13 of 2019, correct?

14 A. Um, no.

15 Q. No, you were not in contact with him or, no,
16 that's not correct? My question was --

17 A. Oh, I'm sorry. No, I was not in contact with him
18 in March of 2019.

19 Q. Thank you. You had been teleworking since August
20 of 2018, correct?

21 A. Yeah, I mean actually kind of even before that,
22 so. What I recall is I felt like it really kind of
23 started in June, because he just wanted to stop, like he
24 kept wanting to have these meetings and reaching out to
25 me. And so it really started in June. And then I think

1 more into July. But then, from what I recall, the more
2 -- like a telework arrangement with Tony began in
3 August.

4 MR. KOLSKY: Your Honor, may I approach the
5 witness?

6 THE COURT: You may.

7 Q. Ms. Strickland, I've handed you what's currently
8 marked as Defendants' Exhibit DM.

9 A. (Looks.)

10 Q. Is this an e-mail from you to Amal Scoggins and
11 Nancy Dunham dated November 26, 2018?

12 A. If I could just have a moment?

13 Q. Yes.

14 A. Thank you. (Reads.) Okay.

15 Q. Is that an e-mail from you to Amal Scoggins and
16 Nancy Dunham dated November 26, 2018?

17 A. That's what it appears to be.

18 MR. KOLSKY: Your Honor, I move to admit Exhibit
19 DM into evidence.

20 THE COURT: Any objection?

21 MR. STRICKLAND: I object, this has a plaintiff's
22 Bates number and presumably this went to Amal Scoggins's
23 and Nancy Dunham's work account, I don't recall it being
24 produced by defendants in discovery.

25 THE COURT: Well haven't you been -- haven't you

1 been over the documents that they proposed? It has a
2 letter on it.

3 MR. STRICKLAND: Yes, but I noted -- we noted an
4 untimeliness objection.

5 THE COURT: Oh, that it was untimely produced as
6 of the time that the exhibit lists were prepared, you're
7 saying?

8 MR. STRICKLAND: I'm saying I don't believe that
9 they produced this in discovery. We didn't get anything
10 from --

11 THE COURT: Well what is the -- is there -- what
12 is the discovery request that -- I'll take it
13 provisionally, but if you can show me a discovery
14 request that should have called to this document and
15 they did not produce it, I will strike it.

16 It's admitted, Exhibit 145 in evidence.

17 (Exhibit 145, marked.)

18 THE COURT: Proceed.

19 MR. KOLSKY: Mr. Spears, please display Exhibit DM
20 -- now Exhibit 145.

21 (On screen.)

22 Q. Amal Scoggins is an attorney at the Administrative
23 Office of the US Courts, correct?

24 A. Yes.

25 MR. KOLSKY: Mr. Spears, can you please magnify

1 the paragraph at the bottom of Page 1 and continuing
2 onto Page 2, beginning with "In the meantime"?

3 (Enlarged.)

4 Q. Ms. Strickland, could you please read that
5 paragraph.

6 A. Um, yes, it says "In the meantime I have informed
7 James, Chief Judge Gregory, and Heather, that I would
8 like the Fourth Circuit to assist me in finding a
9 replacement elsewhere in the Fourth circuit because my
10 relationships with the Federal Defender and my
11 colleagues have been irreparably damaged and I no longer
12 feel welcome in that environment."

13 THE COURT: In that --

14 A. "I did not want to leave my" --

15 THE COURT: Excuse me. Go ahead. I interrupted
16 and I shouldn't have. Finish.

17 A. "I did not want to leave my position at the
18 Federal Defender Office, which I considered my dream
19 job, but at this point I have been constructively
20 discharged. I consider James's lack of engagement as
21 EDR coordinator to be a major contributing factor in
22 this decision. Although he has now offered to send my
23 resume to other Federal Defender offices in the Fourth
24 Circuit to ask their hiring availability, it is
25 exceedingly unlikely that anything will be resolved

1 before Thursday when counseling expires."

2 Q. Ms. Strickland --

3 THE COURT: Excuse me. I just want a
4 clarification.

5 When you say "James" there, to whom are you
6 referring, ma'am?

7 THE WITNESS: James Ishida, the Circuit Executive.

8 THE COURT: Thank you.

9 Go ahead, Mr. Kolsky.

10 Q. Ms. Strickland, is it true that by November 2018
11 you believed you had been constructively discharged?

12 A. Yeah, I mean it definitely was an ongoing, um, I
13 think "irreparably damaged" was very apt, the right
14 thing to use.

15 Q. And you believed that you had been constructively
16 discharged because you felt you were no longer welcome
17 at the Federal Defender's Office, correct?

18 A. Yeah, I mean from what I understood from the
19 investigator it sounded like, um, you know my character
20 and integrity were being questioned as a defense to the
21 complaints, and, um, nothing was being -- I mean at this
22 point the investigation has been pending for months with
23 no progress. Um, this e-mail, from what I recall -- and
24 it's possible this is actually a draft because it looks
25 like there are some typos in here. I don't know. It's

1 possible that I produced a draft e-mail that I didn't
2 actually send --

3 Q. I think you're getting a little beyond the scope
4 of my question, Ms. Strickland, but your counsel will
5 have an opportunity to question you.

6 You stayed at the Federal Defender's Office until
7 March of 2019 because you wanted to wait until you found
8 another job, right?

9 A. I think that was part of it, yes. I mean I never
10 really gave up hope that maybe the thing could be
11 resolved through the EDR process. I mean being a
12 Federal Defender was my dream job and I wanted to stay
13 with the FDO for my entire career until retirement, so
14 it was very difficult for me to accept the possibility
15 that I might have to be forced to leave because of this
16 hostile working environment. So I did -- even though I
17 felt that way, I did try to work through the process the
18 best that I could to see if there would be some sort of
19 solution, but there wasn't.

20 Q. During the mediation phase of your EDR process,
21 did Circuit Mediator, Ed Smith, tell you that Tony
22 Martinez would allow you to change your duty station to
23 Asheville?

24 A. After 6 months of stonewalling, yeah, I think he
25 said, yeah, there's an, um, an office that I would share

1 with an intern or a library space to work. It makes you
2 wonder why all of a sudden office space was available
3 after 6 months of no office space.

4 Q. Well didn't Mr. Smith tell you that Tony Martinez
5 had offered you his own office space in Asheville?

6 A. I don't recall the exact words that he said.

7 Q. Would it refresh your recollection to listen to a
8 recording of that portion of the conversation with
9 Mr. Smith?

10 A. No, I'm not denying it. If that's what he said,
11 I'm not going to deny that.

12 Q. Is it -- so is your testimony that Mr. Smith told
13 you that Tony Martinez had offered you his own office in
14 Asheville?

15 A. It would not surprise me at all if that's what he
16 said, yeah.

17 Q. Do you have a recollection of that?

18 A. I'm sorry, I'm not trying to be difficult, um, but
19 that's sound right, yeah.

20 Q. You read the Fourth Circuit's EDR plan while you
21 were employed by the Federal Defender's Office, correct?

22 A. Yeah, of course at some time I did, I mean I
23 hadn't heard of it or received any training until after
24 these events occurred. But, yes, I did. When I did
25 find out what the plan was, I read it.

1 Q. And you read it multiple times?

2 A. I'm sure I did, yeah.

3 Q. You read it carefully, right?

4 A. Um, yes, of course.

5 Q. And did you have a conversation with Amal
6 Scoggins, from the Administrative Office of US Courts,
7 on September 13th, 2018?

8 A. I know I talked to her. I mean I couldn't say
9 it's the exact date, but that sounds right.

10 Q. During that conversation, did Ms. Scoggins tell
11 you that the Federal Public Defender is not going to
12 have any authority in terms of how the matter is
13 resolved in an EDR setting and that he will not be the
14 mediator nor will he make the final decision before the
15 court?

16 A. I recall I think that was one statement that she
17 made.

18 Q. Did Ms. Scoggins also say the following to you,
19 "What will happen is you will be entitled to file a
20 formal complaint, if it's not resolved in counseling, if
21 it's not resolved in mediation, and you will, in that
22 formal complaint, have the opportunity to have a hearing
23 before a judicial officer. And so the judicial officer
24 will make the final decision based on the allegations
25 that you raised in the formal complaint. And so it's

1 typically a couple of things. First, they're
2 determining whether or not you're discriminated against
3 or you were subjected to a workplace violation, and then
4 from that they're deciding that if you were, what are
5 the remedies that you're entitled to."

6 Did Ms. Scoggins make that statement to you?

7 MR. STRICKLAND: Objection, hearsay.

8 THE COURT: You're not offering that for the
9 truth, you're offering it for the fact that the
10 statements were made, is that correct, Mr. Kolsky?

11 (Silence.)

12 A. I think that was one thing that she said. I mean
13 it was a larger conversation where she was also saying
14 that an accused Federal Defender can't be disqualified
15 from an EDR proceeding and that she didn't know
16 specifically how all of that worked in Federal Defender
17 Offices.

18 Q. And did Ms. Scoggins also -- well did you ask
19 Ms. Scoggins who the final decision would be made by and
20 did she respond, "So it would be whoever is the
21 presiding judicial officer, and so Chief Judge Gregory
22 will decide who the judicial officer will be. But it
23 will definitely be made by a judicial officer"?

24 A. I mean -- I'm sure that's one statement that she
25 made.

1 Q. And did you make an audio recording of your
2 conversation with Ms. Scoggins?

3 A. I'm sure I did.

4 Q. And you produced that during discovery in this
5 case?

6 A. Yeah.

7 MR. KOLSKY: Your Honor, I move to admit
8 Defendant's Exhibit HO, which is that recording that the
9 plaintiff produced during discovery.

10 THE COURT: Any objection?

11 MR. STRICKLAND: So this recording is not going to
12 be used for the substance of what Amal Scoggins said,
13 it's just that statements were made to the plaintiff?

14 THE COURT: Well that's how I understand it. Yes,
15 it proves that the -- it tends to prove that the
16 statements were made.

17 MR. STRICKLAND: (Pause.) Again I think this is
18 one of those situations where the plaintiff, its
19 counsel, should have an opportunity to object if she'd
20 like to.

21 THE COURT: You know my practice, you're the
22 attorney here. Well you're not the only attorney, but
23 she's on the stand.

24 You have no objection?

25 MR. STRICKLAND: Objection.

1 THE COURT: Well what's the ground?

2 MR. STRICKLAND: I have no objection.

3 THE COURT: Oh, I misheard, forgive me.

4 MR. STRICKLAND: What I just said --

5 THE COURT: It's admitted, Exhibit 146, in
6 evidence.

7 (Exhibit 146, marked.)

8 Q. Ms. Strickland, did you have a call with Circuit
9 Executive James Ishida on January 17th, 2019?

10 A. I don't recall the specific dates, but that
11 wouldn't surprise me.

12 Q. And during that call did Mr. Ishida say the
13 following to you, "If Caryn wants to proceed and
14 requests a hearing and at that time you're going to --
15 Judge Gregory will appoint a judicial officer and there
16 will be -- there will be findings on the merits between
17 that point and the end of the proceeding."

18 A. I'm sure that's one of many things that he said.

19 Q. And did you make an audio recording of your call
20 with Mr. Ishida?

21 A. Yes.

22 Q. And you produced that recording during discovery
23 in this case?

24 A. Yes.

25 MR. KOLSKY: Your Honor, I move to admit Exhibit

1 HP, which is that recording that plaintiff produced in
2 discovery.

3 THE COURT: No objection, Mr. Cooper --

4 Mr. Strickland, excuse me?

5 MR. STRICKLAND: I would assert the hearsay
6 objection for the recording, but it's --

7 THE COURT: And you are right, the hearsay
8 objection is sustained. I will admit it limited to the
9 fact that those things were said. Admitted as Exhibit
10 147.

11 (Exhibit 147, marked.)

12 Q. I believe you testified earlier today,
13 Ms. Strickland, that you met with Ed Smith on or about
14 February 7th, 2019, is that right?

15 A. Yeah, that sounds right.

16 Q. During that meeting did Mr. Smith say the
17 following to you, "We're at that stage, we don't get
18 resolved here, it's going to be a fun complaint, and I
19 don't think the Chief Judge will hear it, but he'll have
20 to appoint a judge to hear it"?

21 A. Right, and he said that the judge would not
22 micromanage or tell the attorneys what to do in the
23 final hearing.

24 Q. But just to be clear, the statement that I read to
25 you is a statement that he made to you, correct?

1 A. Sure, among many other statements.

2 Q. And did you make an audio recording of your
3 meeting with Mr. Smith?

4 A. Yes.

5 Q. And you produced that during discovery in this
6 case?

7 A. Yes.

8 MR. KOLSKY: Your Honor, I move to admit Exhibit
9 HE, which is that recording that the plaintiff produced
10 during discovery.

11 THE COURT: HE. All right.

12 No objection if I limit it as I have heretofore,
13 Mr. Strickland?

14 MR. STRICKLAND: (Silence.)

15 THE COURT: Is that right?

16 MR. STRICKLAND: Yes.

17 THE COURT: It's admitted as limited, Exhibit 148
18 in evidence.

19 (Exhibit 148, marked.)

20 Q. Ms. Strickland, while you were still employed at
21 the Federal Defender's Office, you understood that if
22 you proceeded to a formal hearing on your EDR claim, a
23 judge would decide your EDR claim and make a
24 determination about remedies, correct?

25 A. No, that was not my understanding.

1 Q. Please turn to Page 24 of your deposition
2 transcript.

3 A. (Turns.) I'm sorry, could you say the page again,
4 please?

5 Q. Yes, it's Page 24.

6 A. (Turns.)

7 Q. I'm going to ask you a different question,
8 Ms. Strickland.

9 In February of 2019, you understood that the
10 hearing officer -- if you proceeded to the formal
11 complaint, the hearing officer would be a judge,
12 correct?

13 A. I think I likely believed that the hearing officer
14 would be a judge, yeah. I did not believe -- to clear
15 up a misconception, I never believed that the hearing
16 officer was going to be Tony Martinez. So we can just
17 get that out of way.

18 Q. Thank you. (Pause.) Your position in this case
19 is that you believed, as a practical matter, that the
20 presiding judicial officer wouldn't order any remedies
21 that Mr. Martinez didn't agree to, is that correct?

22 A. Yeah, I think that's a fair statement.

23 Q. And you believed that based on what you claimed
24 were statements made to you by Ed Smith and Jill
25 Langley, right?

1 A. Um, yes.

2 Q. The EDR plan itself provides that remedies can be
3 ordered by the presiding judicial officer, right?

4 A. I'm sorry, could you repeat that question please?

5 Q. The EDR plan itself provides that remedies can be
6 ordered by the presiding judicial officer, right?

7 A. Yes, I mean in theory I think that's what the EDR
8 plan states, it's just not what occurred in this
9 specific case.

10 Q. Did you ever seek a clarification based on the
11 difference between what the EDR plan stated and what you
12 claim you were told by Mr. Smith and Ms. Langley?

13 A. They were both very clear about it from what I
14 recall of the conversation. So I don't know what there
15 would be to clarify.

16 Q. So you didn't seek clarification from James
17 Ishida, the EDR coordinator?

18 A. No, I mean he works directly for the Fourth
19 Circuit and the Chief Judge, so I knew that he wouldn't
20 necessarily be a good person to ask.

21 Q. He was the EDR coordinator, correct?

22 A. He was, but he had an inherent conflict of
23 interest in that position.

24 Q. Ms. Strickland, what are your current sources of
25 income?

1 A. I do -- I work as, um, a private appointed counsel
2 for the State of North Carolina. I receive
3 court-appointed appellate cases representing indigent
4 criminal defendants.

5 Q. What, if any, overhead expenses do you have for
6 your legal practice?

7 MR. STRICKLAND: Objection, your Honor, the
8 mitigation defense was stricken in this case.

9 THE COURT: She's got to prove her damages, this
10 goes to that point, and I'm allowing it.

11 You may answer the question.

12 A. Can you please repeat the question? I'm sorry.

13 Q. What, if any, overhead expenses do you have for
14 your legal practice?

15 A. Yeah, you know sitting here right now I couldn't
16 give you like numbers or a specific thing, but, um --
17 and part of that is just because I've recently started
18 this practice that's evolving -- and I mean this
19 litigation has, um, affected it as well. But, um, I
20 mean all of the things that I think are listed in the
21 IDS report are things that are either necessary overhead
22 expenses or that I intend to, um, you know, have as soon
23 as I'm able to.

24 THE COURT: Ms. Strickland --

25 Q. Do you mean --

1 Wait a minute, Mr. Kolsky, I'll allow to you
2 examine, but I just want to be clear here.

3 As I understand it, you now specialize in -- you
4 are private counsel appointed under the appropriate
5 provisions in North Carolina to represent indigent
6 defendants, but your practice, the way I get it, is
7 limited to appeals, is that correct?

8 THE WITNESS: Yes, your Honor. So, um, the way
9 that this works in North Carolina is that while there's
10 some Public Defender Offices in the state, there are not
11 very many, and so the state relies very heavily on
12 private-appointed counsel who basically act as public
13 defenders, except that they are appointed by the state
14 in particular cases. So it's technically a contract
15 position. But it's something that for the -- something,
16 for example, that if somebody wants to make their
17 practice full-time, that they're basically treated like
18 a, um, public defender.

19 THE COURT: I'm familiar with the -- with the
20 approach. My question was primarily, if not entirely,
21 you're called in as an appellate counsel, is that
22 correct?

23 THE WITNESS: Oh, um, yes, your Honor, I serve as
24 appellate counsel.

25 THE COURT: How many appellate, um, appointments

1 have you handled over let's say 2022?

2 THE WITNESS: Gosh, it would be hard to estimate
3 exactly.

4 THE COURT: But an estimate is satisfactory.

5 THE WITNESS: Okay. Okay. Um, gosh, between 10
6 and 20, at least.

7 THE COURT: Thank you.

8 Is that typical per year?

9 THE WITNESS: Um, that's a hard question to answer
10 just because again I'm kind of at the beginning of this
11 practice.

12 THE COURT: You're hoping to grow this practice?

13 THE WITNESS: Yes, I'm hoping to grow and
14 basically kind of, you know, maximize the appointments
15 that I can take.

16 THE COURT: Thank you.

17 Mr. Kolsky, go ahead. I interrupted.

18 MR. KOLSKY: Thank you, your Honor.

19 Q. Ms. Strickland, do you pay for a paralegal or
20 other staff?

21 A. Currently I do not have a paralegal, but that is
22 something that I would like to have.

23 Q. Have you taken any steps to hire a paralegal or
24 other staff?

25 A. I'm really not in any position to do that at this

1 time.

2 Q. What is the range of your hourly rate of pay for
3 the cases you handle?

4 A. I'm sorry, can you repeat that please?

5 Q. What is the range of your hourly rate of pay for
6 the cases you handle?

7 A. Um, so it depends on the type of case.

8 Lower-level felonies are \$75 an hour. Higher-level
9 felonies are, um, \$85 an hour. And in response to one
10 of the filings, um, that came from you all, I realize
11 that I have had one first-degree murder appeal assigned
12 to me. I have not submitted any vouchers for that yet.
13 But that is technically \$100 per hour.

14 Q. Could you --

15 THE COURT: Excuse me.

16 Just now to break it down, could you break down
17 the 10 to 20 appointments in 2022 as an exemplar, how
18 many were lower felonies and how many were higher?

19 THE WITNESS: Um, so if I had to just take a wild
20 -- not a wild guess, but if I had to take an educated
21 guess, um, I would think it would be 50/50. It might
22 trend a little bit more towards the lower-level felonies
23 just because, you know, there are more of those to get
24 assigned. But again I would have to -- I would be happy
25 to provide a further submission to the Court, if that

1 would be helpful. But my cases are all listed on the
2 North Carolina appellate court's website.

3 THE COURT: Thank you.

4 Mr. Kolsky, go right ahead.

5 Q. Ms. Strickland, you sometimes worked more than 40
6 hours per week while you were employed at the Federal
7 Defender's Office, correct?

8 A. I'm sure I did to get the work done. I mean we
9 had a lot of work to do, so.

10 Q. And you didn't get paid more or get credited hours
11 for those additional hours, right?

12 A. Um, I don't recall having overtime or anything
13 like that.

14 Q. Approximately how many hours do you work currently
15 in your current job?

16 A. Well again that's kind of hard for me to estimate
17 because it's been so disrupted by this litigation. But
18 I think what I've tried to do is basically maintain a
19 comparable work/life balance as the, um, the Federal
20 Defender's Office. So full-time but with appropriate
21 time off and things like that.

22 Q. Well you've spent considerable time on this case
23 as well, right?

24 A. Yeah, I mean I've been forced to.

25 Q. Would you say you've spent less than 1600 hours on

1 your, um -- on your legal practice per year?

2 A. (Pause.) I really don't know the answer to that
3 question.

4 Q. Have you applied to any other jobs in the past
5 three years?

6 A. Um, since joining the roster, um, which I couldn't
7 tell you exactly when that was, but, no, I haven't
8 because I really like the roster work and I think it
9 very closely approximates what I was doing at the
10 Federal Public Defender's office, um, the best that I
11 can, um, outside of that employment situation.

12 Q. You're currently living in Tryon, North Carolina,
13 is that right?

14 A. Yes.

15 Q. Are you willing to relocate for a job?

16 A. Um, at this time, um, no, and that's part of the
17 reason why I'm doing the work that I'm doing, because no
18 matter where you work in the state, the rates are the
19 same and the work is same. I get assigned cases from
20 all over the state.

21 Q. Are you willing to relocate to Charlotte for a
22 job?

23 MR. STRICKLAND: Objection, your Honor. Are we
24 sure this isn't somehow related to mitigation and it's
25 just a backdoor way to get in it?

1 THE COURT: It's proof of her damages and it's
2 relevant. He may have it.

3 You may answer.

4 Would you go back to Charlotte if there was a job
5 opportunity there?

6 A. Sitting here right now, well I mean it's very
7 speculative, it would depend what it was and everything.
8 But I mean sitting here right now, if it was like a
9 similar job to what I was doing, then, um, no, I
10 probably wouldn't.

11 Q. Ms. Strickland, you made some audio recordings of
12 conversations with other judiciary employees while you
13 were employed at the Federal Defender's Office, correct?

14 MR. STRICKLAND: Objection.

15 THE COURT: Sustained.

16 MR. STRICKLAND: I don't think any --

17 THE COURT: Wait. Wait a minute. Wait a minute.

18 I've been reflecting on this and, Mr. Kolsky, I
19 don't see why this is relevant unless any such call, um,
20 is violative of the law of some state, and I don't think
21 it is violative of the law in North Carolina, but I
22 could be wrong. And if it is not, then I don't see the
23 relevance. So I'm disposed to sustain it, unless you
24 represent that this is violative of the law.

25 MR. KOLSKY: Well it's relevant to

1 Ms. Strickland's ability to be reinstated or to receive
2 front pay in lieu of reinstatement. We don't know
3 whether the --

4 THE COURT: Wait a minute. I have to say I don't
5 think so. Sustained.

6 MR. KOLSKY: May I --

7 (Pause.)

8 THE COURT: Anything else for this witness?

9 MR. KOLSKY: Your Honor, I'm not sure if that
10 ruling covers, um, a separate issue and so I'm going to
11 ask the question. But I don't want to run afoul of --

12 THE COURT: You're not running afoul if you think
13 it's some separate issue. Go ahead.

14 Q. Ms. Strickland, did you retain privileged
15 attorney-client information when you left the Federal
16 Defender's Office?

17 MR. STRICKLAND: Objection, it's the same issue.

18 THE COURT: I don't think it is.

19 MR. STRICKLAND: It is.

20 THE COURT: I don't think it is. He can ask it in
21 that form and we'll see what she says.

22 MR. STRICKLAND: Your Honor, I'm representing that
23 that would be against the ethical rules in North
24 Carolina --

25 THE COURT: Wait. Wait a minute. He's simply

1 asking the question. And I'm going to allow him to ask
2 the question.

3 What do say to that, Ms. Strickland?

4 A. Could you please repeat the question?

5 Q. Okay.

6 Did you retain any privileged attorney-client
7 information when you left the Federal Defender's Office?

8 A. Well it's really hard for me to answer that
9 question because I tried to be very protective of any
10 kind of case-related information, but the types of
11 things that, for example are on my privilege log, are
12 things that defendants have filed unredacted in the
13 litigation. So whether it meets the technical
14 definition of privilege? You know I couldn't tell you
15 that. But I could tell you that I just tried to be very
16 protective of all client-related information.

17 THE COURT: But when you say "protective" of it, I
18 understand that in one sense, but I guess he's asking,
19 the way I understand his question, did you take any of
20 that with you?

21 THE WITNESS: I'm sorry, of what?

22 THE COURT: Any client-privileged,
23 attorney-client-privileged material. Did you take any
24 of that with you when you left the employ of the Federal
25 Defender's Office?

1 THE WITNESS: Well the materials that were
2 intermingled and interlinked with materials for my EDR
3 claims and this litigation, um, were not possible to
4 separate.

5 THE COURT: All right, that's your answer.

6 THE WITNESS: So my understanding is that that was
7 protected activity.

8 Q. So, Ms. Strickland, is that --

9 THE COURT: Go ahead, Mr. Kolsky.

10 Q. So is it your testimony that you did retain
11 attorney-client privileged materials when you left the
12 Federal Defender's Office?

13 MR. STRICKLAND: Objection. North Carolina
14 follows the end-product rule. I'm not sure what this is
15 relevant to?

16 THE COURT: Just a moment. That misstates the
17 witness's answer and so I'm going to sustain it.

18 It's not necessary to argue every question,
19 Mr. Strickland, you can object. Sustained. She's given
20 us her view.

21 Q. Ms. Strickland, isn't it true that some of the
22 materials that you've retained, you indicated on your
23 privilege log in this case that they were not relevant
24 to the litigation?

25 A. Um, ultimately, yeah, we did not produce, um,

1 certain things that did not seem to be relevant, but
2 that doesn't mean they weren't relevant at the time.

3 Q. But ultimately you determined that they were not
4 relevant to this litigation?

5 A. Um, ultimately, yes, if we did not turn them over
6 on relevance grounds, then that's what we did in
7 discovery, so I stand by that.

8 MR. KOLSKY: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 Q. Ms. Strickland, I've handed you what's been marked
12 as Defendants's Exhibit GU.

13 A. (Looks.)

14 Q. Is this an e-mail from Laura Miner to you on
15 August 22nd, 2018?

16 A. If I could just have a moment to review it?

17 Q. Yes.

18 A. (Reads.) Okay.

19 Q. Ms. Strickland, is this an e-mail from Laura Miner
20 to you on August 22nd, 2018?

21 A. That's what it appears to be.

22 MR. KOLSKY: Your Honor, I move to admit Exhibit
23 GU into evidence.

24 THE COURT: Any objection?

25 MR. STRICKLAND: The hearsay objection as before.

1 THE COURT: Why is this relevant? Mr. Kolsky.

2 Why is the fact that the e-mail was sent, why is that
3 relevant to any issue in this case?

4 MR. KOLSKY: The most relevant part of this
5 document is in the paragraph, um, beginning with
6 "Holding off the complaint." It says, "Holding off the
7 complaint and cooperating with the investigation into
8 wrongful conduct, as long as Tony is kept completely out
9 of it, the strategy for doing this is as follows." And
10 then go down to the second point. "It makes Tony and JP
11 think they're still in control and gives them the
12 opportunity to make further mistakes."

13 So we think this exhibit shows that Ms. Strickland
14 was delaying the, um, the EDR process so that she could
15 allow, as she put it, "Tony and JP to make further
16 mistakes."

17 THE COURT: And who do you suggest the sender of
18 this e-mail is?

19 MR. KOLSKY: Um, this is from the plaintiff. If
20 you go onto the next page it's signed "Caryn" and her
21 e-mail address is above the top of the e-mail that I was
22 referring to, that I was reading from.

23 THE COURT: I understand.

24 Well, Mr. Strickland, then it's an admission by
25 her, isn't it? And at least it has some relevance.

1 MR. STRICKLAND: I understand that, but there's
2 also communications from Laura Miner, Nancy Dunham --

3 THE COURT: Well we'll limit those, but -- as I
4 have before, but we'll admit it as Exhibit 148 in
5 evidence. 149. The Clerk properly corrects me.

6 (Exhibit 149, marked.)

7 THE COURT: Go ahead, Mr. Kolsky.

8 Q. Ms. Strickland, you met with Tony Martinez on
9 August 9th, 2018, correct?

10 A. That sounds right.

11 Q. And you made an audio recording of that meeting?

12 A. Um, yes, I did, um, because I -- I no longer
13 trusted him. That's why I put it in my mediation
14 supplement.

15 Q. And you produced that recording during discovery
16 in this case?

17 A. Yes, and during the EDR process.

18 MR. KOLSKY: Your Honor, I move to admit Exhibit
19 HN, which is that recording the plaintiff produced
20 during discovery.

21 THE COURT: Any objection?

22 MR. STRICKLAND: May I have just one moment, your
23 Honor?

24 THE COURT: You may.

25 (Pause.)

1 MR. STRICKLAND: No objection. Thank you.

2 THE COURT: HN is admitted, Exhibit 150 in
3 evidence.

4 (Exhibit 150, marked.)

5 Q. Ms. Strickland, you had a call with James Ishida
6 on September 5th, 2018, is that right?

7 A. I'm sorry, can you repeat that?

8 Q. You had a call with James Ishida on September 5th,
9 2018, correct?

10 A. Um, yes, that sounds right.

11 Q. You made an audio recording of that call, correct?

12 A. Yes.

13 Q. And you produced that during discovery?

14 A. Um, yes.

15 MR. KOLSKY: Your Honor, I move to admit Exhibit
16 HH, which is that recording that the plaintiff produced
17 during discovery.

18 THE COURT: No objection?

19 MR. STRICKLAND: One more moment so I can consult
20 my notes?

21 THE COURT: Of course.

22 (Pause.)

23 MR. STRICKLAND: No, this particular audio
24 recording, I would say, um, is hearsay, not for the
25 substance. It's similar to 146, 147, and 148.

1 THE COURT: Well, um --

2 What's your answer to that, Mr. Kolsky?

3 MR. KOLSKY: These recordings are not being
4 offered for the truth of the matter asserted, but rather
5 just for the facts that the statements were made.

6 THE COURT: I accept that. As Mr. Strickland has
7 pointed out, it is hearsay, but I will admit it for the
8 fact that statements were made, as limited.

9 Q. Ms. Strickland --

10 MR. KOLSKY: I'm sorry, your Honor, that's Exhibit
11 151?

12 THE COURT: 151, correct.

13 (Exhibit 151, marked.)

14 Q. Ms. Strickland, you had a call with Ed Smith on
15 February 12th, 2019, right?

16 A. Well I mean I don't remember the precise date, but
17 that sounds right.

18 Q. And you made an audio recording of that call?

19 A. Um, yes.

20 Q. And you produced that during discovery?

21 A. Yes.

22 MR. KOLSKY: Your Honor, I move to admit Exhibit
23 HI, which is that recording that the plaintiff produced
24 during discovery.

25 THE COURT: With the same limitation?

1 MR. KOLSKY: Yes, your Honor.

2 THE COURT: No objection with the limitation,
3 Mr. Strickland?

4 MR. STRICKLAND: Yes, your Honor.

5 THE COURT: It's admitted with that limitation,
6 152 in evidence.

7 (Exhibit 152, marked.)

8 Q. Ms. Strickland, you had another meeting with
9 Mr. Smith on February 26th, 2019, correct?

10 A. Again, you know without seeing it, I don't know
11 the exact date, but that sounds right.

12 Q. And you made an audio recording of that meeting,
13 right?

14 A. Yes.

15 Q. And you produced that recording during discovery?

16 A. That's right.

17 MR. KOLSKY: Your Honor, I move to admit Exhibit
18 HF, which is the recording that the plaintiff produced
19 during discovery.

20 THE COURT: With the same limitation.

21 And with that limitation you have no objection,
22 Mr. Strickland?

23 MR. STRICKLAND: Yes, your Honor.

24 THE COURT: It is admitted with the limitation for
25 the fact of the statements made. That's all. 153 in

1 evidence.

2 (Exhibit 153, marked.)

3 Q. Ms. Strickland, you had another meeting with
4 Mr. Smith on March 8th, 2019, correct?

5 A. Again, I mean that sounds right.

6 Q. And you made an audio recording of that meeting
7 and produced it during discovery?

8 A. Um, yes.

9 MR. KOLSKY: Your Honor, I move to admit Exhibit
10 HG, which is that recording the plaintiff produced
11 during discovery, and we move to admit it with the same
12 limitation.

13 THE COURT: No objection with the limitation,
14 Mr. Strickland?

15 MR. STRICKLAND: And, yes, your Honor. I'm sorry.

16 THE COURT: That's all right. Exhibit 154 in
17 evidence as limited.

18 (Exhibit 154, marked.)

19 MR. KOLSKY: Your Honor, may I approach the
20 witness?

21 THE COURT: You may.

22 Q. Ms. Strickland, I've handed you what's currently
23 marked as Defendants's Exhibit DX.

24 A. (Looks.)

25 Q. Do you recognize this as a series of text messages

1 between you and Laura Miner in November of 2018?

2 A. If you could give me just a moment please?

3 Q. Yes.

4 A. (Reads.) Okay.

5 Q. Is this a series of text messages between you and
6 Laura Miner in November of 2018?

7 A. That's what it appears to be.

8 MR. KOLSKY: Your Honor, I move to admit Exhibit
9 DX into evidence.

10 THE COURT: No objection?

11 MR. STRICKLAND: I have some degree of concerns on
12 a 106 basis, if we'd be able to supplement this, because
13 it's just part of the chain?

14 THE COURT: You may, um, assuming that there is
15 more to the chain. I will consider supplementing it.
16 But, um, having made that remark, you have no objection
17 to admitting this portion if I follow the rule of
18 completeness, correct?

19 MR. STRICKLAND: Yes, your Honor.

20 THE COURT: All right, DX is admitted. If there
21 is more than the rule of completeness would, um, permit
22 to be admitted, I will so admit it.

23 That's 155 in evidence.

24 (Exhibit 155, marked.)

25 MR. KOLSKY: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 Q. Ms. Strickland, I've handed you what's currently
4 marked as Defendants's Exhibit GE.

5 A. (Looks.)

6 Q. Are these your handwritten notes dated June 6th,
7 2018?

8 A. If I could just have a moment please?

9 (Pause.)

10 Q. Ms. Strickland, I'm not going to ask you any
11 questions about the content, I'm just asking you are
12 these your handwritten notes from June 26th, 2018?

13 A. Oh, hold on. That is what they appear to be.

14 MR. KOLSKY: Your Honor, I move to admit Exhibit
15 GE into evidence.

16 THE COURT: No objection to GE?

17 MR. STRICKLAND: No, your Honor.

18 THE COURT: GE is admitted, Exhibit 156.

19 (Exhibit 156, marked.)

20 Q. Ms. Strickland, you believe that many different
21 people knowingly and intentionally violated your
22 constitutional rights, correct?

23 A. I don't know what you mean by "many"? I mean I
24 think the named defendants in this case and certain
25 employees, like the First Assistant, I think violated my

1 rights.

2 Q. So the First Assistant, JP Davis, violated your
3 rights, correct?

4 A. Yes.

5 Q. And Tony Martinez?

6 A. Yes.

7 Q. And Josh Carpenter?

8 A. I think potentially, yes.

9 Q. And James Ishida?

10 A. James Ishida is named in the due process claim,
11 yes.

12 Q. And Judge Gregory?

13 A. Yes, Judge Gregory is named in the due process
14 claim.

15 Q. And Ed Smith?

16 A. Um, I mean Ed Smith is not named as a defendant,
17 but I don't know -- I mean saying someone violated your
18 rights is a legal conclusion. I mean did he say certain
19 statements that contributed to my decision to end the
20 EDR process? Yes, he did.

21 Q. And Jill Langley?

22 A. Um, yes, I would say the same thing. I mean for
23 whatever it's worth, I think -- I don't know that they
24 were, um -- I think that they were trying to explain to
25 me how they thought it was, um, with the EDR process,

1 but -- in terms of there not being any remedies at a
2 final hearing. But that was the effect that it had on
3 me.

4 Q. And Heather Beam, did Heather Beam violate your
5 rights as well?

6 A. Heather Beam did not conduct an adequate
7 investigation into these claims. She's not a named
8 defendant, but I mean she didn't even contact anyone on
9 my witness list, so.

10 Q. How about Bill Moormann, did he violate your
11 rights too?

12 A. Um, I really don't know the answer to that because
13 I don't -- I don't -- I wasn't there personally, so I
14 don't know what his level of involvement was in this
15 case.

16 Q. What about Cheryl Walter, the former General
17 Counsel of the Administrative Office of US Courts, did
18 she violate your rights too?

19 A. So my understanding was that she was originally
20 named as an individual-capacity defendant, and she filed
21 a declaration in this case stating that an accused unit
22 executive cannot be disqualified because doing that
23 would be unfair to the employing office. So, um --
24 among other statements. I mean I don't know to the
25 extent that that advice was relied on, I mean that seems

1 clearly wrong to me.

2 Q. And so because she gave advice that you believe
3 was wrong, you sued her in her individual capacity,
4 meaning you thought she should be personally liable to
5 you violating your constitutional rights, is that right?

6 MR. STRICKLAND: Objection, your Honor. Are these
7 defendants still in the case?

8 THE COURT: Sustained. Wait. Wait. Wait a
9 minute. One, they're not. Two, she would not be
10 personally liable in any event, this case at this
11 posture is only against various named defendants in
12 their official capacities. I'll sustain the objection.

13 Q. Ms. Strickland, do you believe Frank Johns, the
14 Clerk of Court, violated your rights?

15 A. Well what I recall is that he, um, unbeknownst to
16 me, was joking with Heather behind my back about what a
17 pain in the ass I was and how they were just so glad I
18 didn't apply for a position working in the court. I
19 think he used the phrase, "That's one off the chess
20 board."

21 Q. Didn't you say in a recent filing that you thought
22 he violated your rights?

23 A. I guess that's in the eye of the beholder.

24 Q. And even during this litigation you believe your
25 rights have been violated, correct?

1 A. (Pause.) Yes, I do.

2 Q. And you believe that a Fourth Circuit judge wrote
3 an opinion in the **Wilcox** case in order to influence the
4 outcome of your lawsuit and violate your rights,
5 correct?

6 MR. STRICKLAND: Objection.

7 THE COURT: Well there's some basis for --

8 MR. STRICKLAND: May I be heard on that?

9 THE COURT: I don't think it's necessary, I
10 remember the argument, and she can be asked whether
11 that's what she thinks.

12 Is that what you think, ma'am?

13 THE WITNESS: Um, that was not the basis of our
14 argument, the argument was based on whether there was a
15 reasonable appearance of a conflict of interest under
16 the statute 455(a). I don't remember us ever making any
17 sort of accusation to that effect. And from what I
18 recall, that's in the filings and the transcripts, so.
19 I know that that keeps getting repeatedly brought up,
20 but that's just a complete mischaracterization.

21 Q. It's a complete mischaracterization, is that what
22 you said?

23 A. (Silence.)

24 Q. Could you please turn to Page 155 of your
25 deposition transcript.

1 A. (Turns.) I'm sorry, you said which page?

2 Q. Page 155, Line 9.

3 A. Oh, sorry. (Turns.)

4 Q. I'm going to read it and I want you to tell me if
5 I read it correctly.

6 Question, "Do you think that the panel, the **Wilcox**
7 panel, conspired to decide the case as it did in order
8 to help the defendants in this case?" Answer, "I think
9 it's possible."

10 Did I read that correctly?

11 A. Right, because it's an apparent conflict of
12 interest on its face. The question is what a reasonable
13 person would believe, not whether they -- I don't know
14 whether they did that, I don't know what -- that's not
15 the question.

16 Q. And, Ms. Strickland, you moved for sanctions
17 against me and my colleagues accusing us of violating
18 your rights too, correct?

19 A. Yes, I did.

20 Q. Ms. Strickland, it sounds like almost every person
21 who has had any connection to your EDR process and to
22 this lawsuit has violated your rights, does that seem
23 plausible to you?

24 A. I think --

25 MR. STRICKLAND: Objection, this seems

1 prejudicial, I would like to be heard on this.

2 THE COURT: No, it's intended to be prejudicial,
3 but now I think it's irrelevant. Sustained. I mean
4 it's argumentative. I'm sustaining it on that basis.
5 It may be argued.

6 MR. KOLSKY: Yes, your Honor.

7 We just have one more exhibit. May I approach the
8 witness?

9 THE COURT: You may.

10 Q. Ms. Strickland, I've handed you what's currently
11 been marked as Defendants's Exhibit DZ.

12 A. (Looks.)

13 Q. Is this a series of text messages between you and
14 Valerie Maneri dated between February 15th and February
15 27th, 2019?

16 A. Um, may I just have a moment to review it?

17 (Pause.)

18 A. Yes, that is what it appears to be.

19 MR. KOLSKY: Your Honor, I move to admit Exhibit
20 DZ into evidence.

21 MR. STRICKLAND: Objection.

22 THE COURT: Yes, the same objection as to what --
23 Ms. Maneri will be limited to what the -- the fact that
24 it was said.

25 No objection to so limiting it, Mr. Kolsky?

1 MR. KOLSKY: No objection to limiting it in that
2 way.

3 THE COURT: All right.

4 MR. STRICKLAND: I also wanted to raise the --

5 THE COURT: Go ahead.

6 MR. STRICKLAND: This is the same as the Laura
7 Miner text, Number 106. It's possible to supplement, if
8 necessary.

9 THE COURT: I will allow to you supplement, if
10 necessary.

11 It's admitted, with those limitations, as Exhibit
12 157.

13 Is that it for this witness?

14 (Exhibit 157, marked.)

15 MR. KOLSKY: I'm sorry, I didn't hear the last
16 part, your Honor?

17 THE COURT: Is that it for this witness?

18 MR. KOLSKY: Um, two -- I think two more questions
19 for this witness, your Honor.

20 THE COURT: Go right ahead.

21 MR. KOLSKY: Mr. Spears, please display Exhibit
22 DZ, which is now Exhibit 157, and would you please
23 magnify the first blue message from the top.

24 (Enlarged.)

25 Q. Ms. Strickland, would you please read that text

1 message dated February 5th, 2019.

2 A. "My reputation has already been ruined with the
3 Fourth Circuit, things will never be the same again.
4 I'm going to burn the place down on the way out."

5 Q. Did you send that text message?

6 A. Yes, along with another one saying, "It's a due
7 process violation, how can I have Title VII protection
8 with no remedies? And Federal Defenders are not
9 accountable to anyone. No one has oversight. I
10 literally asked the judicial integrity officer, 'Who has
11 oversight?' And we kept going round and round and there
12 was no answer."

13 MR. KOLSKY: No further questions, your Honor.

14 THE COURT: And, Mr. Strickland, do you wish to
15 examine this witness or no?

16 MR. STRICKLAND: Well we're approaching the 1:00
17 hour, so.

18 THE COURT: Well we have 10 more minutes and I'm
19 keeping time. I mean if you don't -- if you want to
20 just eat the time, I'll put the 10 minutes on you.

21 MR. STRICKLAND: We'll eat the time and make that
22 decision, um, after the conclusion of this hearing, or
23 trial.

24 THE COURT: Well, not at the -- no, you won't,
25 you'll make that decision by 9:00 tomorrow -- not

1 tomorrow, Wednesday, since I can't sit tomorrow. We'll
2 start on Wednesday morning. If you want to ask her
3 questions, now is the time.

4 Actually I think what -- wait a minute, I
5 misspoke, Mr. Strickland, and I apologize. She was
6 called as an adverse witness. You don't have to examine
7 her now. And you do have the right to call her at any
8 time during your case.

9 So you tell me, are you going to examine her now
10 or during some other -- well you've rested, so, um, it's
11 either now or I'll allow you to defer the decision until
12 9:00 tomorrow morning, um, Wednesday morning, um, and
13 you'll eat 10 minutes.

14 What is it that you want to do?

15 MR. STRICKLAND: I'll eat the 10 minutes.

16 THE COURT: That's fine.

17 All right, then we will, um -- you may step down,
18 Ms. Strickland. And, um, we will suspend for the
19 moment.

20 The government has made a motion for a judgment
21 based upon the evidence as it stood when the plaintiff
22 rested. We will hear argument on that motion this
23 afternoon at 2:30. I have a sentencing and another
24 short hearing -- or as soon thereafter as the sentencing
25 is concluded. So I will see you back here this

1 afternoon for argument on that motion. I don't think
2 argument ought exceed 10 minutes per side. That motion
3 is limited to the evidence as it stood at the time the
4 plaintiff rested.

5 All right, we'll recess until 2:30 this afternoon.
6 The time --

7 MR. KOLSKY: May I just ask one question, your
8 Honor?

9 THE COURT: Yes.

10 MR. KOLSKY: I just wanted to confirm the trial
11 schedule for this week. Our understanding is that we're
12 having trial today, Wednesday, Thursday, Friday, and
13 Monday, is that correct?

14 THE COURT: No, not Friday. The schedule is as
15 follows. Today. Wednesday. Thursday. Monday.
16 Tuesday. That's five days.

17 And the total elapsed time now, as of 2:00, is the
18 plaintiff has used up 50 minutes, the defense has used
19 up 2 hours and 40 minutes. And we'll recess -- and the
20 arguments don't count -- in the afternoon, don't count
21 as time. So we'll have argument this afternoon at 2:30.
22 We'll recess.

23 THE CLERK: All rise.

24 (Recess, 12:55 p.m.)

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1 C E R T I F I C A T E
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I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Judge William G. Young, on Monday, December 11,
2023, to the best of my skill and ability.

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11
12 /s/ Richard H. Romanow 03-11-24
13 RICHARD H. ROMANOW Date
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